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18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA  
20 OAKLAND DIVISION

21 IN RE LITHIUM ION BATTERIES  
22 ANTITRUST LITIGATION

Case No. 13-MD-02420 YGR (DMR)

23 CLASS ACTION

24 INDIRECT PURCHASER PLAINTIFFS'  
25 CONSOLIDATED SECOND  
26 AMENDED CLASS ACTION  
27 COMPLAINT

28 This Documents Relates to:

DEMAND FOR JURY TRIAL

ALL INDIRECT PURCHASER ACTIONS

\* \* \* REDACTED VERSION \* \* \*

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1 The Indirect Purchaser Plaintiffs listed in paragraphs 392-444 below (“Plaintiffs”) bring this  
2 action on their own behalf and as a putative class action on behalf of all others similarly situated in  
3 the United States.

4 The Indirect Purchaser Plaintiffs’ primary amended factual allegations are as follows:  
5 (1) allegations detailing specific collusive meetings between Defendants in the years 2000 and 2001,  
6 set forth in section III.A.1, *infra*; (2) allegations detailing the U.S. Subsidiary Defendants’<sup>1</sup> role and  
7 participation in Defendants’ collusive conduct, set forth in section III.B, *infra*; and (3) details from  
8 the October 2013 guilty pleas of Defendants Sanyo Electric Co., Ltd. and LG Chem, Ltd. for the  
9 criminal price fixing of Lithium Ion Batteries, which occurred after the filing of the First  
10 Consolidated Amended Class Action Complaint (ECF No. 256, filed July 26, 2013), set forth in  
11 section III.E.1, *infra*. Additionally, this Complaint conforms to the recently-filed Stipulation and  
12 Order Dismissing Certain Claims in Indirect Purchaser Plaintiffs’ Consolidated Amended Complaint  
13 (ECF No. 400, filed March 7, 2014) by removing a state damages subclass for residents of Puerto  
14 Rico, and revising the class period start dates for the Utah and New Hampshire subclasses.

15 Plaintiffs, by and through their attorneys, based on their individual experiences, the  
16 independent investigation of counsel and consultants, and information and belief, allege as follows  
17 based upon information known to date:

## 18 I. INTRODUCTION

19 1. Defendants are the world’s largest manufacturers of Lithium Ion Batteries (defined  
20 below), and include multinational corporations Samsung, LG, Sanyo, Sony, Panasonic, NEC,  
21 Toshiba and Hitachi. “Lithium Ion Batteries,” or “LIBs,” are battery cells which are rechargeable  
22 and which utilize lithium ion technology. Lithium Ion Batteries are sometimes also referred to as  
23 secondary batteries. Lithium Ion Batteries power virtually every laptop computer, cellphone,  
24 smartphone, digital music player (*e.g.*, iPods), tablet device (*e.g.*, iPads), digital camera and  
25 camcorder, and cordless power tool used today. Defendants control a substantial majority of the  
26 \$16 billion annual market for Lithium Ion Batteries, dominating sales to original equipment

27 <sup>1</sup> The “U.S. Subsidiary Defendants” and “Foreign Defendants” are identified and defined in the  
28 “Parties” section, *infra*.

1 manufacturers (“OEMs”) such as Dell, HP, Apple and virtually every other household name  
2 manufacturer of consumer electronics.

3 2. Defendants engaged in a long-running conspiracy over more than a decade, the object  
4 of which was to unlawfully fix, raise and stabilize prices for Lithium Ion Batteries in violation of  
5 federal and state antitrust laws. Defendants’ cartelization of the worldwide market is revealed in  
6 Defendants’ secret internal materials and records, some of which were recently produced to  
7 Plaintiffs.

8 3. Defendants include two convicted felons – Sanyo Electric Co., Ltd. and LG Chem,  
9 Ltd. – both of which recently pled guilty to the criminal price-fixing of Lithium Ion Batteries.

10 4. Plaintiffs and the proposed Classes consist of persons and entities who (1) indirectly  
11 purchased a stand-alone Lithium Ion Battery manufactured by a Defendant, or (2) a Lithium Ion  
12 Battery Product containing a Lithium Ion Battery manufactured by a Defendant, during the period  
13 from and including January 1, 2000 through May 31, 2011 (the “Class Period”).<sup>2</sup> The products  
14 containing Lithium Ion Batteries and for which Plaintiffs and the Classes seek damages are laptop,  
15 notebook, netbook, and tablet computers (such as iPads), mobile telephones, smartphones, digital  
16 audio players (such as iPods), power tools, digital cameras and camcorders/digital video cameras, as  
17 well as replacement batteries for each of the aforementioned products (collectively “Lithium Ion  
18 Battery Products”). Due to Defendants’ collusion, Plaintiffs and Class members were damaged by  
19 paying artificially inflated prices for Lithium Ion Battery Products.

20 5. As *The Economist* reported in 2002, “Lithium-ion batteries are the foot-soldiers of the  
21 digital revolution. They power telephones, music players, digital cameras and laptops. They are  
22 amazingly small and light, and can store more energy in less space than any other type of  
23 rechargeable battery.”<sup>3</sup> The report continued that “[w]ithout the lithium-ion battery, introduced a  
24 decade ago, portable gadgets – from mobile phones and video cameras to laptops and palmtops –  
25 would have remained brick-like objects best left on the desk or at home.”

26 <sup>2</sup> For two damages classes, New Hampshire and Utah, Plaintiffs commence their class periods on  
27 January 1, 2008, and May 1, 2006, respectively.

28 <sup>3</sup> *Hooked on Lithium*, *The Economist*, <http://www.economist.com/node/1176209> (last visited  
June 10, 2013).

1           6. Defendants' unlawful conduct is a textbook price-fixing cartel. That is, a small,  
2 concentrated group of Lithium Ion Battery manufacturers, producing commoditized products, sought  
3 to artificially increase prices by agreeing to restrain competition among themselves. Defendants'  
4 agreement to fix and stabilize Lithium Ion Battery prices was accomplished through several means.  
5 The means included restricting output and supply, agreeing on prices or price targets (including price  
6 increases, and limiting price reductions), using common formulas tied to material costs to set  
7 industry prices, and price-floors, below which Defendants would not agree to sell LIBs. While the  
8 manner, means, and impact varied over time, the cartel's common goal during the conspiracy was to  
9 artificially raise the prices of Lithium Ion Batteries above the competitive level. And indeed,  
10 Defendants were successful, to the detriment of Plaintiffs and Class members.

11           7. No later than 2000, Defendants were engaging in collusive discussions – including  
12 face-to-face meetings and telephone conversations – for the purpose of providing confidential,  
13 highly-sensitive information to each other concerning their manufacture and sale of Lithium Ion  
14 Batteries. The collusive discussions and in-person meetings occurred among Defendants sometimes  
15 on a monthly basis, and even more frequently at times during the conspiracy. Meetings between  
16 these competitors occurred at locations such as restaurants, airports, office buildings, and hotel  
17 meeting rooms. During these collusive meetings and discussions, it was understood that Defendants  
18 shared a common goal to restrain price competition. Defendants believed cooperation was important  
19 to limit price competition. And so in furtherance of their common goal to limit price competition,  
20 Defendants communicated to each other highly detailed information about pricing, capacity,  
21 utilization, demand, marketing and product development plans.

22           8. The reason that Defendants held these collusive discussions over numerous years to  
23 restrain competition was because the market for Lithium Ion Batteries was experiencing pricing  
24 pressure based on the increasing commodity nature of Lithium Ion Batteries and new entrants who  
25 were willing to lower prices to increase their market share. The competitors quickly concluded that  
26 they did not want to wage a price war – and so they colluded instead of competed.

27           9. By engaging in these collusive meetings, and systematically sharing highly-sensitive,  
28 competitive information, Defendants sought to, and did, achieve their joint goal of elevating Lithium



1 Ion Battery prices. Many of the Foreign Defendants have recently produced confidential documents  
2 detailing some of Defendants' secret meetings in furtherance of the conspiracy. The documents  
3 reflect dozens of face-to-face conspiratorial meetings between Defendants, in which high-level  
4 executives with pricing authority discussed and agreed to cooperate to avoid price competition. To  
5 achieve their common goal, these senior executives shared confidential pricing, capacity, utilization,  
6 demand, marketing, and product development future plans and strategies. Internal emails and other  
7 records document Defendants' conscious commitment to collectively stabilize and raise Lithium Ion  
8 Battery prices.

9 10. For example, on October 24, 2002, executives from Samsung and Sanyo GS Soft  
10 Energy Co. Ltd. ("GS Soft Energy" or "SGS"), two direct competitors, met at GS Soft Energy  
11 Company's offices in Japan and discussed and agreed they did not want industry price competition  
12 because it would hurt them and the other Defendants: "***With price competition only, all will be in  
13 trouble → have to make the industry Healthy.***"<sup>4</sup>

14 11. Another collusive meeting in 2004 documented Sony and Samsung's understanding  
15 that price reductions by the competition needed to (and would) stop. Specifically, on June 30, 2004,  
16 the following executives from Sony and Samsung, two direct competitors agreed: "***Some Cell  
17 Makers started price reduction. This is a dangerous situation where cost is increasing while price  
18 is going down. Sony is not responding with price. If it responds, then the market will be destroyed  
19 so price reduction must be suppressed.***"

20 12. On July 22, 2005, Samsung executives met with executives from competitor Hitachi  
21 Maxell, in Osaka, Japan at the "Ibaraki Market Maxell Factory Internal Conference Room." The  
22 companies agreed that they "***[m]ust cooperate in terms of control over industry.***"

23 13. More examples of Defendants' meetings to collude include discussions about  
24 restraining output to increase prices. For example, in February 2005 meetings, executives from  
25 Samsung, Sanyo, Sony, Matsushita, GS Soft Energy (SGS), NEC-Tokin, and Hitachi Maxell,  
26 discussed and agreed upon supply restrictions. Samsung's "Planning Department" wrote internally  
27

---

28 <sup>4</sup> All emphasis in these documents have been added by Plaintiffs, unless otherwise indicated.

1 after these collusive meetings: ***“It is the situation of the decline of selling price and oversupply,***  
2 ***thus, the overall situation of the industry for 2005 is expected to be difficult. [and that Samsung]***  
3 ***Requested to refrain from adding lines competitively, and each company seems to be willing to***  
4 ***refrain from adding new lines.”***

5 14. Evidence also demonstrates that in August 2006 competitors Samsung and Sanyo met  
6 in Tokyo at a restaurant “near Roppongi.” Defendants memorialized their discussions which  
7 included their understanding ***“that the 3 companies (Sanyo, SONY, SDI) will lead the market with***  
8 ***stability with the golden section – okay to compete on technology, but refuse competition based on***  
9 ***sales price.”***

10 15. Documents show Defendants understood their actions violated international antitrust  
11 laws – and yet they cavalierly dismissed these concerns. For example, in November 2007, an LG  
12 executive sent an internal email regarding a recent conversation with LG’s direct competitor  
13 Samsung (referred to as “S Company”). “In regards to an S Company meeting, S Company informed  
14 me that it is uncomfortable attending a meeting due to company internal issues and that it would  
15 contact us soon.” Another LG executive explained that Samsung seemed to be under ***“special***  
16 ***investigation by the Prosecutors’ Office. As an external explanation, they are saying that they are***  
17 ***restraining from contacts with other companies due to the Fair Trade Commission’s***  
18 ***investigation.”*** LG characterized Samsung’s statement as “somewhat of a ***lame excuse.***” LG then  
19 indicated that despite the investigation, ***“During a phone conversation with JGL [a Samsung senior***  
20 ***executive], we agreed to make a contact in any way next year.”***

21 16. Samsung shared LG’s view that governmental antitrust investigations were, as LG put  
22 it, a “lame excuse” and should not impede the price-fixing conspiracy. After this discussion in  
23 December 2007 between LG and Samsung, for example, with respect to pricing of Lithium Ion  
24 Batteries to go into Apple’s iPads, on December 1, 2010, LG executive Young Wook Chun reported  
25 via email to numerous LG executives his discussions with Samsung Vice President Yo Ahn Oh,  
26 stating: ***“We said that we would raise the price at least by 10% from the existing price, and they***  
27 ***also promised to commit.”***

1           17.     Frequently, Defendants' collusive meetings occurred between two Defendants at one  
2 time. The same Defendants would then hold collusive meetings with other Defendants as well within  
3 days of each other. Or, the Defendants would simply pass along the meeting notes to their co-  
4 conspirators. It was understood based on the substance of the discussions in these meetings that  
5 Defendants had been having collusive discussions with other Defendants for the same purpose of  
6 collectively raising Lithium Ion Battery prices.

7           18.     Defendants' consciousness of guilt is also shown by their use of concealment  
8 measures, such as coded emails, covert meetings, and instructions to destroy evidence of their  
9 conspiracy. Documents reflect a near-constant use of code names such as "S Company," "Osaka  
10 Company," and descriptions such as "information obtained regarding the grand mansion S across the  
11 sea. . . ." (referring to Japanese conspirator Sanyo). Numerous emails between conspirators  
12 instructed that the recipient should "delete . . . upon reading" and delete "immediately" and "as soon  
13 as possible" – evidencing an awareness of their illegal activities.

14           19.     Economic facts further support the existence of Defendants' conspiracy to raise  
15 Lithium Ion Battery prices. For example, very soon after the DOJ served subpoenas on some of the  
16 Defendants in mid-2011 relating to potential criminal antitrust violations in the market for Lithium  
17 Ion Batteries, Defendants' prices rapidly dropped at a rate only seen during the prior decade in the  
18 global recession.

19           20.     In order for Defendants' conspiracy to succeed worldwide in elevating prices, the  
20 Foreign Defendants and U.S. Subsidiary Defendants had to work in concert when targeting the  
21 integral U.S. sector of the \$16 billion annual market for Lithium Ion Batteries. The conscious  
22 participation of numerous U.S. Subsidiary Defendants in Defendants' scheme is evidenced by  
23 internal discussions [REDACTED]

24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED] Additional specific details regarding the  
27 conscious participation of the U.S. Subsidiary Defendants are provided herein in section III.B.  
28

1           21. Defendants' conspiracy mirrors in many respects their conduct in other price-fixing  
2 cases previously brought against them, their parents, or affiliates. These Defendants, their parents,  
3 subsidiaries, and/or affiliates have orchestrated some of the largest global price-fixing conspiracies  
4 witnessed in the past decade – fixing the prices of key components for consumer electronic goods, in  
5 particular computers, televisions, and cellular phones. These entities, and many of their executives,  
6 have pleaded guilty to price-fixing dynamic random access memory ("DRAM") chips, liquid crystal  
7 display ("LCD") screens, optical disk drives ("ODD"), and cathode ray tube ("CRT") screens. These  
8 component part conspiracies – like the conspiracy to fix Lithium Ion Battery prices – all have very  
9 similar features, including: (a) a highly concentrated market, controlled by Asian corporations;  
10 (b) pricing pressure exerted on the conspirators by large original equipment manufacturers ("OEMs")  
11 seeking to price their products in a competitive consumer electronics market; (c) rapid  
12 commoditization of new technology; and (d) pricing behavior inconsistent with a competitive  
13 market.

14           22. Just like these other criminal conspiracies, Defendants' conspiracy here successfully  
15 targeted yet again another key component of consumer electronic goods by collusively setting  
16 inflated prices for Lithium Ion Batteries. As a direct result, the prices of Lithium Ion Battery  
17 Products, such as those purchased by the Plaintiffs and class members, were inflated by the illegal  
18 overcharges being passed-on through the distribution channel to the end consumers.

## 19                           **II. DESCRIPTION OF LITHIUM ION BATTERIES**

### 20           **A. Background of Batteries**

21           23. Batteries are one of the primary sources of energy which power many different  
22 machines and devices used every day. There are three different categories of batteries: 1) chemical;  
23 2) physical; and 3) biological. Chemical batteries generate electricity through a chemical reaction  
24 that occurs inside the battery. The batteries at issue in this case – Lithium Ion Batteries – are within  
25 the chemical family of batteries.

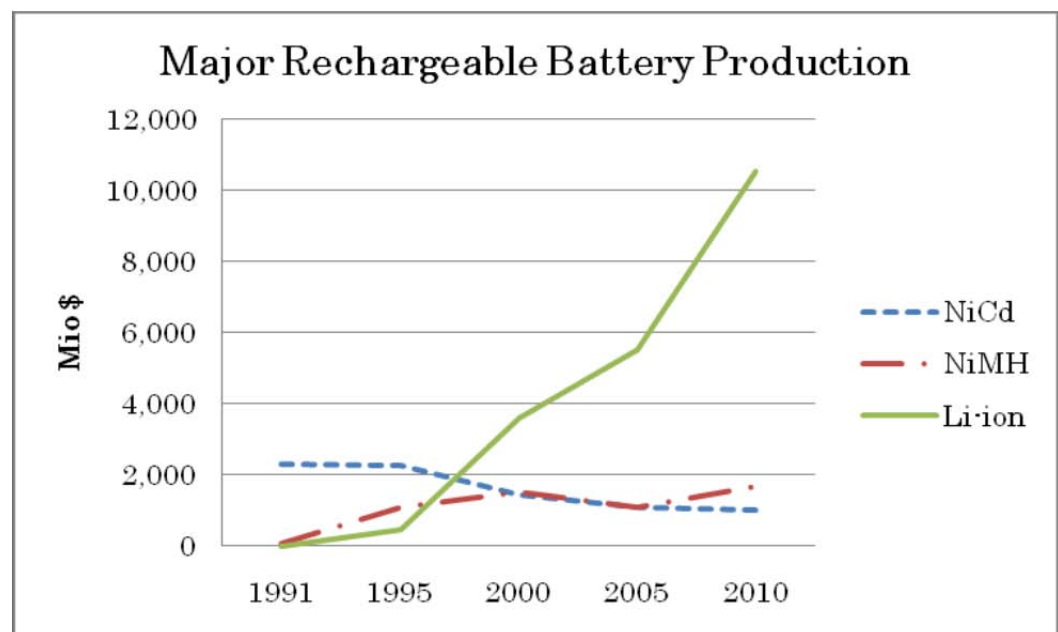
26           24. Chemical batteries are generally classified as either "primary" or "secondary."  
27 Primary batteries are disposable batteries that one uses until they are expended, and then they are not  
28

1 reused and are discarded. Secondary batteries are rechargeable. Rechargeable batteries account for  
2 roughly 80% of all chemical batteries produced worldwide.

3 25. There are four types of secondary batteries that account for the vast majority of  
4 secondary batteries: (1) Lithium Ion Batteries; (2) lead-acid; (3) nickel-cadmium; and (4) nickel-  
5 metal hydride. Lithium Ion Batteries are by far the most popular type of rechargeable battery.

6 26. Both Lithium Ion Batteries as well as nickel-metal hydride rechargeable batteries  
7 were introduced in or around 1991. Since that time, however, Lithium Ion Batteries have quickly  
8 become the most popular type of secondary battery, easily outpacing nickel-metal hydride and  
9 nickel-cadmium rechargeable batteries. Figure 1 below compares the growth rates of Lithium Ion  
10 Batteries to nickel-metal hydride and nickel-cadmium batteries from 1991-2010:

11 **Figure 1: Major Rechargeable Battery Production**



22 27. The European Commission (“EC”), in examining Panasonic’s 2009 acquisition of  
23 Sanyo, detailed the distinctiveness of Lithium Ion Batteries. The EC stated the following in its  
24 “Article 6(s) Non-Opposition” dated September 29, 2009: “Portable rechargeable batteries come  
25 mainly in three principle different chemistries, nickel-cadmium (“NiCd”), nickel-metal hydride  
26 (“NiMH”) and Lithium-ion (“Li-ion”), which all have different physical and performance  
27  
28

characteristics.”<sup>5</sup> The EC report rejected Panasonic’s suggestion that nickel-metal hydride and Lithium Ion batteries were a part of the same market:

The market investigation does not support the Parties’ submission. It has shown that both battery types belong to distinct product markets. The production facilities for NiMH batteries and Li-Ion batteries are completely different so that there is no supply-side substitutability. As the Parties themselves point out, each of these batteries chemistries gives the respective rechargeable battery distinctive physical and performance characteristics. These characteristics also necessitate a different product design for the end-application so that during the life time of a certain model, the two types of batteries are not substitutable. However, even in the case of new models, most market participants have indicated that they would not switch chemistry in response to a permanent price increase of 5-10%.

And the EC report concluded that after obtaining pricing data from the parties to further investigate battery types, “the pricing analysis points towards a separate market for NiMH batteries and a separate market for Li-ion batteries.”

## **B. Lithium Ion Batteries**

### **1. Properties and types of LIBs.**

28. A Lithium Ion Battery generally contains three primary components: (1) the negative electrode (cathode); (2) positive electrode (anode); and (3) the electrolyte. The negative electrode of a conventional Lithium Ion Battery is made from carbon, typically graphite. The positive electrode is a metal oxide (usually a layered oxide (such as lithium cobalt oxide), a polyanion (such as lithium iron phosphate), or a spinel (such as lithium manganese oxide)). The electrolyte is typically a mixture of organic carbonates such as ethylene carbonate or diethyl carbonate containing complexes of lithium ions (usually lithium salts such as lithium hexafluorophosphate, lithium hexafluoroarsenate monohydrate, lithium percolate, lithium tetrafluoroborate, and lithium triflate).

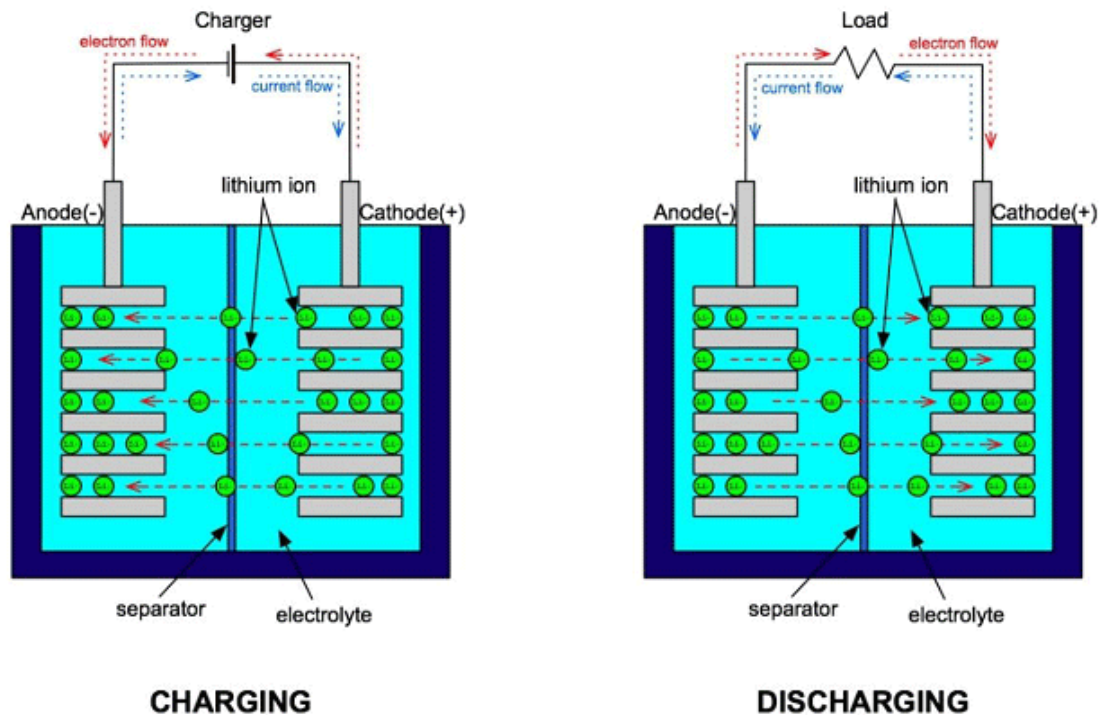
29. Internally, the battery has a separator between the cathode and anode and is filled with the organic electrolyte solution. The separator prevents short-circuits that would occur if there were contact between the anode and cathode. At the same time, the separator protects the electrolyte solution and preserves the battery’s conductivity. In the recharging process, lithium ions are released

---

<sup>5</sup> Case No. COMP/M.5421-PANASONIC/ SANYO, Regulation (EC) No. 139/2004 Merger Procedure, 2009 EUR-Lex CELEX LEXIS 5421 (September 29, 2009), *available at* [http://ec.europa.eu/competition/mergers/cases/decisions/m5421\\_20090929\\_20212\\_en.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m5421_20090929_20212_en.pdf).

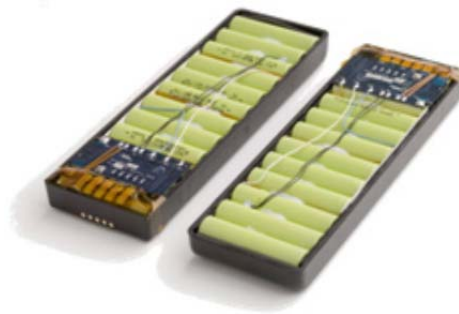
from the cathode into the electrolyte solution where they accumulate between the anode layers. During the discharge process, the ions return to the cathode. The movement of lithium ions between the cathode and the anode during the discharge process creates the electric current from the battery which powers the specific device it is used in. The following diagram illustrates the different parts of a Lithium Ion Battery as well as the discharge/recharge process.

**Figure 2: Lithium Ion Batteries**



30. There are generally two primary steps in the manufacture of the batteries described herein. In the first step, the “cell” of the battery is manufactured which includes the cathode, anode, and electrolyte. The cell, and in some cases, multiple cells, are then assembled inside an enclosure. In some cases, certain protection circuitry is also added inside the enclosure. The assembled product is referred to as the “battery” or “module” and is the product that is placed inside a device to supply power to the device. All of the Defendants named herein manufacture both raw lithium ion battery cells as well as modules. The following is a depiction of multiple lithium ion battery cells placed inside an enclosure with added protection circuitry.

**Figure 3: Lithium Ion Battery Cells Inside Enclosure**



31. In addition to the manufacture and sale of raw lithium ion battery cells and modules, the Defendants also sell raw cells to other entities commonly referred to in the industry as “assemblers” or “packers.” In these cases, the raw lithium ion battery cells made by Defendants are incorporated into a module by assemblers who assemble the cells (and if necessary, circuitry) and then sell the module under their own brand name. Whether a module is manufactured by a Defendant or a packer, the raw cells in a finished battery or module make up the overwhelming cost of a finished lithium ion battery module.

32. Lithium Ion Batteries are generally divided into four different types: (1) small cylindrical (solid body without terminals); (2) large cylindrical (solid body with large threaded terminals); (3) prismatic, sometimes known as “square” (semi-hard plastic case with large threaded terminals); and (4) lithium ion polymer, sometimes known as “pouch” (soft, flat body such as those used in cell phones). Each Defendant manufactures and markets at least one type of Lithium Ion Battery. Lithium ion cylindrical or prismatic batteries are used primarily in notebook computers, camcorders, mobile phones, and other electronic devices. The following is a picture from Hitachi’s website of cylindrical and prismatic lithium ion batteries:

**Figure 4: Cylindrical and Prismatic Lithium Ion Batteries**





33. Lithium ion polymer batteries have more freedom in battery shape which enables the battery to be easily and perfectly tailored to fit the device. The exterior of the lithium ion polymer battery is generally made of a laminate film which allows it to be more flexible in terms of its shape.

34. One of the primary distinguishing features of lithium ion polymer batteries is that the lithium salt electrolyte is not held in an organic solvent, but rather in a solid polymer composite such as polyethylene oxide or polyacrylonitrile. The dry polymer design offers advantages over the traditional lithium ion battery in terms of fabrication and ruggedness since the electrolyte is a solid polymer as opposed to a gel or liquid electrolyte.

35. Lithium Ion Batteries, as defined herein, include cylindrical, prismatic, and polymer Lithium Ion Batteries.

36. Lithium Ion Batteries possess certain unique performance qualities which make them the most popular form of rechargeable battery. In addition, because of these characteristics, Lithium Ion Batteries are not interchangeable (not economic substitutes) with other types of secondary or rechargeable batteries such as nickel-cadmium or nickel-metal hydride.

37. Unlike other forms of rechargeable batteries (such as nickel-cadmium or nickel-metal hydride), Lithium Ion Batteries are the only rechargeable battery which do not suffer from any "memory effect." For example, if a nickel-cadmium battery is charged repeatedly to 70 percent capacity, the discharge voltage will begin to fall sharply from the 70 percent even after a full charge and eventually, the battery will be incapable of holding a charge. The battery essentially remembers 70 percent as the full capacity. Lithium Ion Batteries, on the other hand, do not suffer from the memory effect, and there is no risk to reducing the capacity of the battery when only partially charging the battery.

38. A second feature which makes Lithium Ion Batteries unique is that they are more powerful than all other types of rechargeable batteries. For example, the nominal voltage of a nickel-metal hydride rechargeable battery is 1.2 volts. The nominal voltage of a Lithium Ion Battery, on the other hand, is 3.7 volts, nearly three times more powerful.

39. Lithium Ion Batteries also possess a higher "energy density" than other types of rechargeable batteries. "Capacity" refers to the volume of electricity that a battery can hold. The

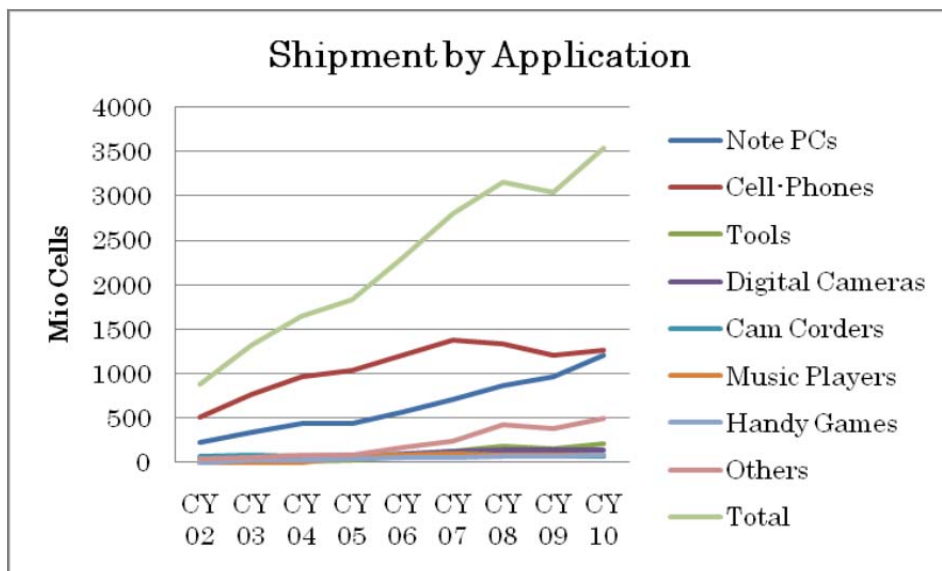
1 energy volume in a battery is the voltage times the capacity. Lithium Ion Batteries possess high  
2 energy density, both per weight and per volume, as compared to other types of rechargeable  
3 batteries. Essentially, a lighter and smaller Lithium Ion Battery can generate the same amount of  
4 electricity as a heavier and larger battery of a different type. For example, Lithium Ion Batteries can  
5 be as much as 70 percent lighter and 60 percent smaller in volume than nickel hydride batteries but  
6 deliver the same amount of power.

7 40. Lithium Ion Batteries also retain their charge better than other types of rechargeable  
8 batteries. For example, Lithium Ion Batteries lose only about five percent of their charge per month  
9 when idle. Other types of rechargeable batteries, like nickel-metal hydride batteries, lose nearly 20  
10 percent of their charge per month when idle.

11 **2. LIBs are commodity products.**

12 41. Because of their superior performance characteristics, and their small size, Lithium  
13 Ion Batteries have become the standard battery used in consumer electronic products. It is estimated  
14 that about 40 to 50 percent of all Lithium Ion Batteries used today are used in small consumer  
15 electronic products such as cell phones and notebook computers. Much of the remaining market for  
16 Lithium Ion Batteries is for use in digital cameras, power tools, and other devices. Figure 5 shows  
17 the different products by volume in which Lithium Ion Batteries are used between 2002-2010.

**Figure 5: Shipments of Lithium Ion Batteries by Application**



42. Lithium Ion Batteries are also highly standardized products, and interchangeable among the same type and across manufacturers. International standard-setting organizations, such as the International Electrotechnical Commission or the Institute of Electrical and Electronics Engineers develop standards to be followed by the manufacturers of Lithium Ion Batteries so that products which utilize Lithium Ion Batteries can be developed to accommodate a specific Lithium Ion Battery. For example, a Lithium Ion Battery “18650,” refers to a cylindrical shaped battery measuring 18.6 millimeters in diameter by 65.2 millimeters in height with a nominal voltage of 3.6 volts and a capacity of 2250mAh.

43. The Institute of Electrical and Electronics Engineers reported in 2008 that the “world increasingly runs on lithium-ion batteries.” It continued that “[t]his is an industry ready for change but not necessarily expecting it, let alone striving for it. The big companies that dominate lithium-ion production – Sony, Panasonic, Sanyo, Samsung, and LG – are all selling batteries not much different from the ones they sold five years ago. Only the initial capacity of batteries has been increasing, at about 5 percent a year. Today they are *commodity products*, manufactured in huge quantities and sold at vanishingly slim profit margins.”<sup>6</sup>

<sup>6</sup> Tekla S. Perry, *The Lady and the Li-ion*, IEEE Spectrum (1 Mar 2008 5:00 GMT), <http://spectrum.ieee.org/energy/renewables/the-lady-and-the-liion#>. (Emphasis added.)

1           44.     In May of 2003, *EE Times* reported:

2                     Practical economics more than ever dictate product paths, and thus  
3                     there's also a ***consolidation of form factors*** for both cylindrical and  
4                     prismatic (rectangular) shapes ... "The industry seems to be focusing  
5                     on ***two standard polymer footprints***: 50 x 34 and 30 x 48 mm. Two  
6                     years ago, there were more than 20 different battery flavors." ... To  
7                     keep their edge, [Japanese manufacturers] kept close tabs on the basic  
8                     consumer areas, by boosting the capacity of the ***standard*** 18650 Li-ion  
9                     cell, long viewed as a primary building block for notebooks.

10                                     \*           \*           \*

11                     "Lithium-ion batteries are still most widely used; the polymers are  
12                     picking up a bit, though," he said, noting the leap in materials research  
13                     with various intermetallic compounds. "***Standardization*** and cost are  
14                     the driving issues. ***The number of package footprints is down to a***  
15                     ***very few, because a lot of different products make design engineers***  
16                     ***nervous***. All of this is driving costs lower." Ultralife says it will boost  
17                     the capacity for the industry-standard 18650 Li-ion cell, viewed as a  
18                     ***primary building block for notebooks***, to 2.4 A-h by the end of the  
19                     year."<sup>7</sup>

20           45.     In a detailed July 20, 2012 investor report titled "*Lithium-ion batteries – A Japanese*  
21                     *tech growth story?*" Citi Research, a division of Citigroup Global Markets, Inc. told its investor  
22                     clients that, with respect to notebook PC batteries, "a lack of progress in boosting battery output has  
23                     resulted in ***increasing commoditization***," and that "[t]he ***commoditization*** of cylindrical batteries  
24                     used in notebook PCs continues."

25           46.     Apple Inc., a major purchaser of Defendants' Lithium Ion Batteries during the Class  
26                     period, presently states on its website: "Lithium-ion Batteries. Rechargeable lithium-based  
27                     technology currently provides the best performance for your Apple notebook computer, iPod, iPhone  
28                     or iPad. You can also find this ***standard battery technology*** in many other devices. Apple batteries  
                    share the characteristics common to lithium-based technology in other devices."<sup>8</sup>

          47.     Samsung presently states on its website that "Both prismatic and cylindrical type  
batteries ***have same [sic] operating mechanism basically***. Prismatic type is usually used for mobile  
devices and its general capacity is 500~1200mAh; whereas cylindrical type is mostly used for

<sup>7</sup> Vincent Biancomano, *Lithium Batteries Eye PCs, Autos*, *EE Times* (May 8, 2003 2:51 PM EDT), <http://eetimes.com/electronics-news/4124557/Lithium-Batteries-Eye-PCs-Autos>. (Emphasis added.)

<sup>8</sup> *Lithium-ion Batteries*, Apple, <http://www.apple.com/batteries/> (last visited June 13, 2013).

1 Notebook PC and camcorders and has 1600~2400mAh capacity which is higher than prismatic  
2 type.”<sup>9</sup>

3 **III. DEFENDANTS CONSPIRED TO RAISE AND STABILIZE LITHIUM ION**  
4 **BATTERY PRICES**

5 **A. Summary and Examples of Defendants’ Overt Acts in Furtherance of Their Conspiracy**

6 48. Defendants’ high-level executives engaged in a series of collusive meetings and  
7 communications starting in or around 2000, and continuing into 2011, all in conscious furtherance of  
8 their goal of inflating Lithium Ion Battery prices. Defendants varied the frequency of their collusive  
9 meetings and communications according to market conditions, sometimes meeting twice a year,  
10 sometimes quarterly, and sometimes within weeks or days of the last meeting or discussion.

11 49. Many of the Foreign Defendants have produced documents in this case which show  
12 Defendants’ acts in furtherance of their conspiracy. These documents reflect at least dozens of  
13 collusive meetings among Defendants. During these meetings, high-level executives with pricing  
14 authority discussed confidential future plans and strategies concerning pricing, capacity, utilization,  
15 demand, marketing and product development in furtherance and reinforcement of Defendants’  
16 conspiracy.

17 50. In secret, Defendants shared past, present, and future production and capacity figures  
18 and forecasts to facilitate the object of their conspiracy, that is, raising Lithium Ion Battery prices to  
19 supra-competitive levels. Defendants’ collusive discussions concerning price, output, and capacity  
20 provided necessary information to cartel members to reach agreement on what price levels should be  
21 offered to customers, and whether to indeed increase or decrease supply in order to restrict price  
22 competition. Defendants’ collusive discussions were also used to police, enforce, and verify that each  
23 member of the cartel was adhering to Defendants’ plan to artificially raise Lithium Ion Battery  
24 prices.

25 51. When memorializing their conspiratorial discussions, Defendants marked these  
26 internal documents as “Confidential.” Samsung and LG prior to production in this case again marked

27 <sup>9</sup> *FAQ: Rechargeable Battery, Samsung SDI*,  
28 [http://samsungsdi.com/f\\_faq\\_list.sdi?post=E&category=SA](http://samsungsdi.com/f_faq_list.sdi?post=E&category=SA) (last visited June 13, 2013) (emphasis added).

1 these discussions “Confidential,” emphasizing the secret, non-public nature of the collusive  
2 communications between top-level executives of competing companies.

3 52. In these conspiratorial meetings, Defendants agreed to provide – and indeed did  
4 provide – *company-specific*, highly detailed data and information, not merely aggregated or  
5 industry-wide data. The information was *non-public* and was not shared with non-participating  
6 companies or anyone else.

7 **1. Defendants’ collusive activities began at least as early as 2000 and continued**  
8 **throughout the Class Period.**

9 53. By 2000, the Japanese Defendants produced 95 percent of the world’s secondary  
10 batteries. In 1999 to 2000, however, the South Korean companies Samsung and LG entered the  
11 business. Samsung and LG began mass production in 2000. Prior to that time, Samsung and LG  
12 began their secret collusion with the Japanese Defendants. These collusive meetings involved  
13 commercially-sensitive market information and not yet publicly available information, including  
14 pricing information and future output and capacity details.<sup>10</sup>

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1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

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








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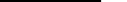

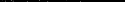
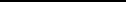
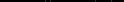



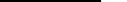

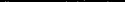
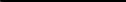


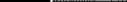

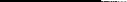
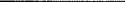
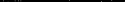
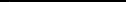
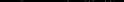


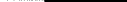
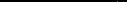

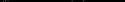
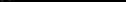
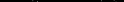


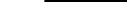
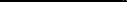

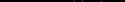
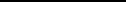
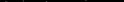


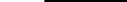
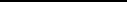

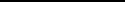
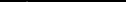
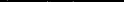


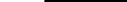
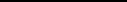

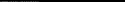
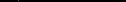
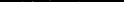


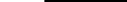
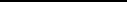

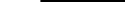
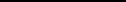
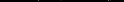


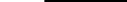
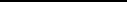

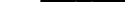
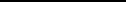
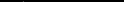


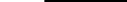
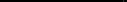

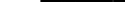
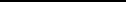



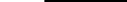
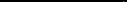

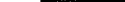
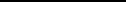



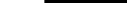
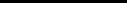

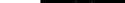
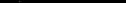
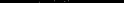


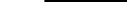
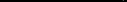

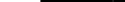
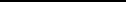
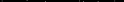


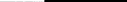
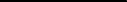

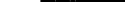
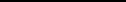
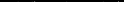


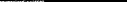
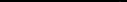

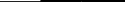
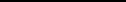
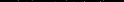


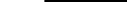
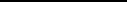

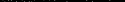
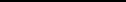
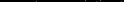


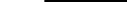
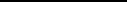

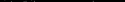
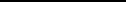
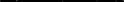

	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

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**Table 1** Demographic characteristics of study population

1. The first group of variables is related to the characteristics of the firm, such as its size, age, and industry. These variables are used to control for the effects of firm-specific factors on the dependent variable.

[illegible]

1. The first group of variables is related to the characteristics of the company, such as its size, age, and industry. These variables are measured using a series of dummy variables and are included in the model to control for the effects of these characteristics on the dependent variable.

1. *Journal of the American Medical Association*, 2000; 283: 2686-2692.

Figure 1. The effect of the concentration of the inhibitor on the rate of polymerization of the monomer. The reaction conditions were:  $[M] = 0.05 \text{ mol/L}$ ,  $[AIBN] = 0.001 \text{ mol/L}$ ,  $[I] = 0.001 \text{ mol/L}$ ,  $[I] = 0.002 \text{ mol/L}$ ,  $[I] = 0.004 \text{ mol/L}$ ,  $[I] = 0.008 \text{ mol/L}$ ,  $[I] = 0.016 \text{ mol/L}$ ,  $[I] = 0.032 \text{ mol/L}$ ,  $[I] = 0.064 \text{ mol/L}$ ,  $[I] = 0.128 \text{ mol/L}$ ,  $[I] = 0.256 \text{ mol/L}$ ,  $[I] = 0.512 \text{ mol/L}$ ,  $[I] = 1.024 \text{ mol/L}$ ,  $[I] = 2.048 \text{ mol/L}$ ,  $[I] = 4.096 \text{ mol/L}$ ,  $[I] = 8.192 \text{ mol/L}$ ,  $[I] = 16.384 \text{ mol/L}$ ,  $[I] = 32.768 \text{ mol/L}$ ,  $[I] = 65.536 \text{ mol/L}$ ,  $[I] = 131.072 \text{ mol/L}$ ,  $[I] = 262.144 \text{ mol/L}$ ,  $[I] = 524.288 \text{ mol/L}$ ,  $[I] = 1048.576 \text{ mol/L}$ ,  $[I] = 2097.152 \text{ mol/L}$ ,  $[I] = 4194.304 \text{ mol/L}$ ,  $[I] = 8388.608 \text{ mol/L}$ ,  $[I] = 16777.216 \text{ mol/L}$ ,  $[I] = 33554.432 \text{ mol/L}$ ,  $[I] = 67108.864 \text{ mol/L}$ ,  $[I] = 134217.728 \text{ mol/L}$ ,  $[I] = 268435.456 \text{ mol/L}$ ,  $[I] = 536870.912 \text{ mol/L}$ ,  $[I] = 1073741.824 \text{ mol/L}$ ,  $[I] = 2147483.648 \text{ mol/L}$ ,  $[I] = 4294967.296 \text{ mol/L}$ ,  $[I] = 8589934.592 \text{ mol/L}$ ,  $[I] = 17179869.184 \text{ mol/L}$ ,  $[I] = 34359738.368 \text{ mol/L}$ ,  $[I] = 68719476.736 \text{ mol/L}$ ,  $[I] = 137438953.472 \text{ mol/L}$ ,  $[I] = 274877906.944 \text{ mol/L}$ ,  $[I] = 549755813.888 \text{ mol/L}$ ,  $[I] = 1099511627.776 \text{ mol/L}$ ,  $[I] = 2199023255.552 \text{ mol/L}$ ,  $[I] = 4398046511.104 \text{ mol/L}$ ,  $[I] = 8796093022.208 \text{ mol/L}$ ,  $[I] = 17592186044.416 \text{ mol/L}$ ,  $[I] = 35184372088.832 \text{ mol/L}$ ,  $[I] = 70368744177.664 \text{ mol/L}$ ,  $[I] = 140737488355.328 \text{ mol/L}$ ,  $[I] = 281474976710.656 \text{ mol/L}$ ,  $[I] = 562949953421.312 \text{ mol/L}$ ,  $[I] = 1125899906842.624 \text{ mol/L}$ ,  $[I] = 2251799813685.248 \text{ mol/L}$ ,  $[I] = 4503599627370.496 \text{ mol/L}$ ,  $[I] = 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1. The first group of variables, *demographic variables*, includes age, sex, marital status, and education. The second group, *attitudinal variables*, includes attitudes toward the environment, attitudes toward the firm, and attitudes toward the government. The third group, *organizational variables*, includes organizational commitment, organizational identification, and organizational trust. The fourth group, *control variables*, includes tenure, income, and job satisfaction. The fifth group, *mediator variables*, includes organizational trust, organizational identification, and organizational commitment. The sixth group, *outcome variables*, includes organizational citizenship behavior, organizational commitment, and organizational identification.

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Country	Year	Population (millions)	Urban population (millions)	Urban population (%)
Algeria	2000	24.0	12.0	50.0
Algeria	2005	25.0	13.0	52.0
Algeria	2010	26.0	14.0	54.0
Algeria	2015	27.0	15.0	56.0
Algeria	2020	28.0	16.0	57.0
Algeria	2025	29.0	17.0	59.0
Algeria	2030	30.0	18.0	60.0
Algeria	2035	31.0	19.0	61.0
Algeria	2040	32.0	20.0	63.0
Algeria	2045	33.0	21.0	64.0
Algeria	2050	34.0	22.0	65.0
Algeria	2055	35.0	23.0	66.0
Algeria	2060	36.0	24.0	67.0
Algeria	2065	37.0	25.0	68.0
Algeria	2070	38.0	26.0	69.0
Algeria	2075	39.0	27.0	70.0
Algeria	2080	40.0	28.0	71.0
Algeria	2085	41.0	29.0	71.0
Algeria	2090	42.0	30.0	71.0
Algeria	2095	43.0	31.0	72.0
Algeria	2100	44.0	32.0	73.0
Algeria	2105	45.0	33.0	73.0
Algeria	2110	46.0	34.0	74.0
Algeria	2115	47.0	35.0	74.0
Algeria	2120	48.0	36.0	75.0
Algeria	2125	49.0	37.0	75.0
Algeria	2130	50.0	38.0	76.0
Algeria	2135	51.0	39.0	76.0
Algeria	2140	52.0	40.0	77.0
Algeria	2145	53.0	41.0	77.0
Algeria	2150	54.0	42.0	78.0
Algeria	2155	55.0	43.0	78.0
Algeria	2160	56.0	44.0	79.0
Algeria	2165	57.0	45.0	79.0
Algeria	2170	58.0	46.0	80.0
Algeria	2175	59.0	47.0	80.0
Algeria	2180	60.0	48.0	80.0
Algeria	2185	61.0	49.0	80.0
Algeria	2190	62.0	50.0	81.0
Algeria	2195	63.0	51.0	81.0
Algeria	2200	64.0	52.0	81.0
Algeria	2205	65.0	53.0	82.0
Algeria	2210	66.0	54.0	82.0
Algeria	2215	67.0	55.0	82.0
Algeria	2220	68.0	56.0	83.0
Algeria	2225	69.0	57.0	83.0
Algeria	2230	70.0	58.0	83.0
Algeria	2235	71.0	59.0	83.0
Algeria	2240	72.0	60.0	83.0
Algeria	2245	73.0	61.0	84.0
Algeria	2250	74.0	62.0	84.0
Algeria	2255	75.0	63.0	84.0
Algeria	2260	76.0	64.0	84.0
Algeria	2265	77.0	65.0	84.0
Algeria	2270	78.0	66.0	85.0
Algeria	2275	79.0	67.0	85.0
Algeria	2280	80.0	68.0	85.0
Algeria	2285	81.0	69.0	85.0
Algeria	2290	82.0	70.0	85.0
Algeria	2295	83.0	71.0	86.0
Algeria	2300	84.0	72.0	86.0
Algeria	2305	85.0	73.0	86.0
Algeria	2310	86.0	74.0	86.0
Algeria	2315	87.0	75.0	86.0
Algeria	2320	88.0	76.0	86.0
Algeria	2325	89.0	77.0	87.0
Algeria	2330	90.0	78.0	87.0
Algeria	2335	91.0	79.0	87.0
Algeria	2340	92.0	80.0	87.0
Algeria	2345	93.0	81.0	87.0
Algeria	2350	94.0	82.0	87.0
Algeria	2355	95.0	83.0	87.0

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69. On March 14, 2002, Samsung met in Japan with Hitachi Maxell. Specifically, between 2:00 p.m. to 4:00 p.m., the following executives from Samsung and Maxell met at the Shibuya Hitachi Maxell 7th Floor Conference Room:

Implicated Company	Employee Attending Collusive Meeting	Executive's Title
Samsung	Jeon, In Sang	General Manager
	Cho, Young Taek	Senior Manager
	Kim, Han Myoung	Manager
Hitachi Maxell	Unknown	Unknown

Agenda items included “[t]he Demand for Square Type,” the “[f]orecast of Supply and Demand for Square Type,” the “Polymer Market,” and “Concerning Sales of Cylindrical Type Line.”

70. On March 15, 2002, the following executives from Samsung met in Japan with Sanyo executives from 9:30 a.m. to 12:00 p.m. in the Samsung Japan Conference Room:

Implicated Company	Employee Attending Collusive Meeting	Executive's Title
Samsung	Jeon, In Sang	General Manager
	Kim, Han Myoung	Manager
	Cho, Young Taek	Manager
Sanyo	Sam (Mori)	Strategy Group Leader and General Manager

Agenda items included “Supply and Demand for Cylindrical Type,” “Cylindrical Market for Note PC,” and “Forecast on Supply and Demand of Square Type.” Sanyo communicated that its “cylindrical type equipment Capa. is approximately 10 million/month – High-speed line: 200~250 ten thousand/month X 3 lines – Low-speed line: 300 ten thousand/month.” Regarding the “Cylindrical Market for Note PC,” the companies communicated that while prices had dropped more significantly in prior years, “in 2002, it is expected that it will be 3%/half year.” The conspirators further communicated that as compared to Panasonic, Maxell, NEC and GSMT, “Sanyo’s operating rate is highest, *but they plan to avoid the extension in the future* and remodel the lines to respond to new Cell.”

71. Between October 22, 2002, and October 25, 2002, Samsung conducted another round of collusive meetings with its competitors in Japan. For example, on October 22, 2002, the following executives from Toshiba and Samsung met at Toshiba Display, Component Materials Corporation Battery Energy Department:

Implicated Company	Employee Attending Collusive Meeting	Executive’s Title
Toshiba	Hirayama Kazunari	General Manager of Business
	Ozaki Hidemichi	General Manager of Planning Production
Samsung	Ahn, Ki Hoon	Business Team Leader
	Oh, Yo Han	General Manager
	Kim, Han Myoung	Manager
	Cho, Young Taek	Senior Manager

Agenda items included “Cylindrical Type,” and “Square Type.” The companies communicated that for cylindrical, “The price of 2.2Ah to Motorola-ESG is almost the marginal cost level,” and communicated regarding the “2003 price for mobile phone use” and that “it is expected that the demand for discount will be approximately under 10%.” The conspirators further “*[a]greed to hold the regular interchange staffer-centric* conference (around end of November) → once every six months.”

72. Also on October 22, 2002, the following executives from GSMT and Samsung met at GS-Melcotec Business Department (Tokyo):

Implicated Company	Employee Attending Collusive Meeting	Executive's Title
GSMT	Lin Ouian Zuolang	President
	Kobayashi Koichi	Vice President
	Toshihide Tanaka	Director (Development)
Samsung	Shinzo Maeda	Director of Sales, Board Member
	Ahn, Ki Hoon	Business Team Leader
	Oh, Yo Han	General Manager
	Kim, Han Myoung	Manager
	Cho, Young Taek	Senior Manager

The conspirators agreed regarding “CAPA extension → Rather than new extension, focus on productivity with the remodeling the existing line,” and that “Current supply and demand BALANCE is good because after 2001 investment for extension there has been no additional extension.” The conspirators further agreed that while “Most of the companies are contemplating additional extensions depending on 2003 demand forecast.” “[w]e should be careful based on the experience that there was oversupply caused by 2001 overinvestment.” Samsung further noted the discussion of the “Cooperative Relation with Our Company.”

73. On October 24, 2002, the following executives from GS Soft Energy and Samsung met at GS Soft Energy:

Implicated Company	Employee Attending Collusive Meeting	Executive's Title
Samsung	Ahn, Ki Hoon	Business Team Leader
	Oh, Yo Han	General Manager
	Kim, Han Myoung	Manager
	Cho, Young Taek	Senior Manager
GS Soft Energy	Honma	Vice President
	Noguchi	General Manager of Management

The conspirators agreed that with respect to the “Forecast on Market from Now on” it was “*necessary to be careful in supply ability expansion.*” The conspirators cautioned each other regarding the “[e]xperience of oversupply due to the whole industry’s optimistic market prospect in 2001.” The executives further agreed that “*With price competition only, all will be in trouble → have to make the industry Healthy.*” They further discussed a “strategy to get rid of a company which disturbs the market.” Samsung noted in its meeting notes “Let’s talk separately with General Manager of Business, Ahn later.” There also were pricing discussions between SDI and Sanyo with respect to Sanyo’s 2.0A battery – a popular product.

74. On October 25, 2002, the following executives from Matsushita and Samsung met at Matsushita Battery Industrial Co., Ltd.:

Implicated Company	Employee Attending Collusive Meeting	Executive's Title
Samsung	Ahn, Ki Hoon	Business Team Leader
	Oh, Yo Han	General Manager
	Kim, Han Myoung	Manager
	Cho, Young Taek	Senior Manager
Matsushita	Futtsu Toshiyuki	Vice President of Secondary Battery
	Norio Saito	General Manager of Marketing
	Yasuo Anno	Marketing Correspondence Leader
	Shimizu Akihiro	Management Planning Division Commodities Strategy Team 1 Leader
	Takagi Hiroki	Management Planning Division Councilor

Agenda items included “Cylindrical Type” and “Square Type.” Matsushita discussed a recent “supply shortage of cylindrical type (reduction of Matsushita’s M/S)” and communicated that the “price discount cut may become small; *however, there is no plan to reduce the price ever.*” Regarding the “Market Forecast from Now on,” Matsushita “do not expect considerable growth in the 2003 market” and “[t]hey hope not to reduce the price competitively.” Samsung later internally described, “Although it was a joke, in the case that there is a merger like Sanyo/GS-MT, or there is a request to recommend a company that wishes to cooperate [i]n reply, if Matsushita experiences difficulties, they would like us to take care of them.”

75. Defendants’ collusive meetings continued apace in 2003. For example, on or about June 26, 2003, executives from Samsung and GS Soft Energy met in Japan at Sanyo’s headquarters, and communicated to each other their specific “2Q Sale Forecast” for each of them broken down by “Cylindrical Type,” “Square Type” and “Polymer.” They then communicated to each other their projected “2003 (March 2004 period) Sale Forecast,” again broken down by each of the three battery types. They further communicated to each other their “Capa status” (capacity status) again broken down by each of the battery types, further broken down into potential and actual production by units of ten thousand units /month. The conspirators further communicated regarding the “Sanyo Capa Extension Plan,” detailing the “Cylindrical Type: 1,000 → 1,200 ten thousand unit,” the “Square Type: 1,600 → 2,000 ten thousand units,” and “Polymer: nothing.”

76. On July 15, 2003, the following executives from Samsung and Toshiba met at 2:00 p.m. at a conference room within the Japan Tokyo ANA Hotel:

<b>Implicated Company</b>	<b>Employee Attending Collusive Meeting</b>	<b>Executive's Title</b>
Samsung	Yoo, Eui Jin	Executive Director at Administration Planning Team
	Cho, Young Taek	Senior Manager at Japan Branch
Toshiba	Kazunori, Fukuma	Person in charge of Display – Parts Materials en banc
	Kubo Hiroshi	Display – Parts Materials en banc Administration Management Division Staff Officer

The conspirators discussed that Toshiba's battery business was for sale, and that its executives were also meeting with a company presumed to be LG regarding a possible sale. The conspirators discussed the significant intellectual property assets that, apparently due to the operation of law, would not be allowed to be transferred to a buyer. Samsung asked "Do you intend to keep IPR [intellectual property rights] while not running the business?" Toshiba responded that "We are not going to run the business and attached the manufacturing (AT Battery) → patent free. Cross License (C/L) with Sanyo and Sony has been reached." Toshiba further stated that it "is negotiating with other companies, and we are making proposal to 2 Korean companies as well as Japanese companies." Samsung stated that "We have formed a connection for a long time through liaison conferences with Toshiba so that it will be significantly reviewed as a matter of concern of Samsung Group." Toshiba communicated detailed capacity and operating rate information.

77. On October 2, 2003, the following executives of Samsung and GS Soft Energy met at 7:00 p.m. at Tokyo Shinjuku Restaurant:

<b>Implicated Company</b>	<b>Employee Attending Collusive Meeting</b>	<b>Executive's Title</b>
SGS	Nagahata	General Manger in Charge of Marketing / Sales
Samsung	Kim, Han Myoung	ME Sales: Manager
	Cho, Young Taek	Japan Branch: Senior Manager

The conspirators communicated that "[t]here is a grand-scale extension of Sanyo, but it is getting concentrated / emphasized on Nokia." The conspirators communicated regarding their "Price Forecast," and communicated that "B/Cell 8% (Pack 10%) drop forecasted," and that "B/Cell is

1 expected to drop approximately 8%, but it could grow due to the influence of China” and that “[i]n  
2 Pack condition (including cell 8%), a 10% price drop is expected.” The conspirators communicated a  
3 very detailed “Extension Trend by Each Company” with “Equipment Company Information” shared  
4 and then “Verified” – for SGS, in regards to a 100 ten thousand extension, Sanyo “considered at the  
5 beginning 2 line extensions, but now, nothing has been decided” and “it is very likely that they will  
6 extend to a Japan (Tokyo) factory) and “[i]t is very likely, first, 1 line, 1 million; and it is expected to  
7 produce next spring at earliest.” With respect to Sanyo, details were exchanged regarding  
8 “Cylindrical type September 120 ppm (440 ten thousand) completion,” “Square type China 150 ten  
9 thousand extension completed, additionally, it is scheduled 4 line extensions,” and that “[e]xtension  
10 of cylindrical type 300 ten thousand was completed in spring, and the after plan is unknown” and  
11 “Square type is proceeding as planned.”

12 78. Defendants’ collusive meetings continued in 2004. On February 5, 2004 Seok Hwan  
13 Kwak of LG (Senior Manager, Tokyo Office) sent an email to Naito Toshiaki at Sony about an  
14 upcoming meeting between several executives at both companies. Kwak wrote “It has been a quite  
15 some time since we met last time. . . . ***Thank you ALWAYS for receiving my phone with a pleasant***  
16 ***voice.***” Mr. Kwak of LG then referred to their phone conversation earlier that day, stating that the  
17 Executive Vice President of Information & Electronic Materials Company and the Vice President of  
18 Battery Business Division would like to “meet you and your people to show their salutation/share the  
19 GENERAL information of Secondary Battery business and etc.” Kwak requests three days in early  
20 March that would work for Toshiaki, and confirms that “[o]f course, we will visit at your site and . . .  
21 we hope to meet your responsible people including Energy Company’s President and [Japanese  
22 characters] since it is their first time with a new position to SONY. . . .” He lists LGC’s participants  
23 at the meeting as: 1) Soon-Yong Hong, Executive Vice President (“You’ve met him before . . .”),  
24 2) Myung-Hwan Kim, Vice President Battery Business Division, and 3) Seokh-Hwan Kwak, Leader,  
25 Tokyo Information & Technology Center. He concludes by saying that “[a]gain, ***SONY’s kind***  
26 ***cooperation is always appreciated by LGChem.***”

27 79. On February 23, 2004 an internal LG email was sent from Assistant Manager Yoo  
28 Sung Oh to General Manager Hyun Sik Park (Battery Planning Development Team). The email

1 included information in preparation for a meeting with Sony. Oh wrote: “This is the content on the  
2 people to meet, summarized by Senior Manager Kwak, Seok Hwan, regarding the March 2 Sony  
3 meeting of the President and the Division Leader. Please refer to it.” Oh forwarded an email from  
4 Senior Manager Seok Hwan Kwak of the Battery Planning and Development Team and Assistant  
5 Manager Yoo Sung Oh. That email begins, “***Dear Executive Vice President, Regarding SONY, I***  
6 ***would like to remind you of the LGC’s meeting history.***” The email then describes a detailed history  
7 of meetings between LG and Sony, and a comprehensive chart of Sony’s organization within its  
8 “electronics-related” business. It ends by mentioning a meeting (and meal) with Sony’s Mr. Naito  
9 and Mr. Kamiyama on February 26. The following is a brief summary of the meetings between LG  
10 and Sony:

11 (a) **Sony Meeting History**

12 (i) **May 2001**: Vice President Gui Pyo Hong and Senior Manager Seok  
13 Hwan Kwak “met Director Nishi, introduced and asked for cooperation.”

14 (ii) **August 26, 2001**: Executive Vice President Jong Pal Kim, General  
15 Manager Woon Hyun Hwang, and Senior Manager Seok Hwan Kwak were “introduced to Mr. GAZI,  
16 then CEO of the Energy Company, and Director Nishi, and asked for cooperation”.

17 (b) The next heading reads: “People EVP Hong had met since then”

18 (i) **July 23, 2002**: “EVP Hong Division leader Mr. HOSOZAWA/Mr.  
19 NAITO in charge of Cellular first greeting and asked for cooperation (on the business trip where he  
20 met MBI/SONY/SANYO/Toshiba/MCC division leaders)”

21 (ii) **November 21, 2002**: “Afterwards, received a proposal for the  
22 acquisition of Sony Prismatic K5 line, and regarding K5, EVP Hong came to Japan again and met  
23 people, such as Mr. Katayama (executive in charge of technology) of the Koriyama factory, other  
24 than division leader Mr. HOSOZAWA. Afterwards, LGC completed the K5 acquisition on June,  
25 2003.”

26 (c) The document goes on to outline the attendees of the upcoming February  
27 meeting between Sony and LG: “Since then, it is the first SONY visit by EVP Hong, and the  
28 attendees this time are: Mr. Nakagawa (appointed as the president of SONY Energy Company from

2002); Mr. Naito (in charge of Cellular Battery); Mr. Kamiyama (in charge of business management planning and strategy); Mr. HOSOZAWA, who was the division leader of PCC division, that he met before. . . .” Kwak concludes by asking for Assistant Manager Yoo Sung Oh to tell him any additional questions “EVP” has before Kwak meets with Mr. Naito on February 26.

80. On February 26, 2004, LG and Sony executives met, i.e., for Sony, Hirokazu Kamiyama, the PCC Division Leader as of March 1, 2004, and Toshiaki Natio, the Cellular Battery Department Leader, PCC Division, Energy Company, and for LG, Seok Hwan Kwak, the Senior Manager, TITC. The meeting minutes prepared by Mr. Kwak and emailed internally stated “Please discard after reading.” LG communicated:

**As Executive Vice President Hong mentioned during his previous visit to SONY, SONY and LG can regard each other as competitors in terms of secondary Li-Ion battery but we are engaged in a friendly competition to promote the growth of the overall Li-Ion industry, and he asked for mutual collaboration in order to avoid any bloodshedding competition over just prices. So we’d like to speak in a frank manner.**

81. An internal LG document, “President Minutes on Business Trip to Japan,” describes meetings that took place March 2 and 3, 2004 in a meeting room at Sony’s Shinagawa Seaside North Tower in Tokyo, the Akasaka Hotel, and various other locations in Japan. The participants from Sony and LG included:

Implicated Company	Employee Attending Collusive Meeting	Executive’s Title
Sony	Mr. Nakagawa	President of Energy Company
	Mr. Kamiyama	Designated PCC Division Leader
	Mr. Naito	GM of Cellular Batteries
	Mr. Matsumoto	T-BTC attendees
	Mr. Tanina	T-BTC attendees
LG	Moon	Manager
	Mr. Hirano	Executive Vice President
	Soon Yong Hong	President of I & E Materials
	VP Myung Hwan Kim	Battery Division Leader
	Seok Hwan Kwak	Senior Manager

(a) An initial summary of the meeting explains, “LG Chem has maintained friendly relations with SONY for the growth of the Li-Ion battery industry. The meeting was about introducing LG Chem’s new management/President of Energy Company at SONY, and the new Division leader to each other, sharing information and asking for cooperation among companies.”



1 Detailed Sony organizational charts are included, focusing on business structure and, specifically,  
2 Sony's Lithium Ion Battery operations. The two companies discussed all aspects of the business:  
3 demand, products, supply, technological development, and prices. The document also discusses other  
4 companies' information: "SANYO also announced price hikes to customers and MBI also plans to  
5 do so. Afterwards, [it] received the opinions of NEC/Hitachi Maxell that they would raise prices as  
6 well. *Believe that if LG Chem and SDI cooperate in this, the growth of Li-Ion battery industry is*  
7 *likely to go in the right direction.*" The meeting minutes also detail Sony's communication with  
8 competitors, including:

- 9 • "Sony first approached SDI before LGC regarding the price  
10 hike issue and believes that SDI would also say OK. SDI seems  
11 to be most worried about responses from internal customers  
12 rather than external customers."
- 13 • "Sony already pushed BAJ (Battery Association of Japan), and  
14 BAJ will ask companies for cooperation through various  
channels."
- 15 • "Since this is the first price hike, [Sony] want[s] all Battery  
16 companies to cooperate."

17 (b) The document recounts a discussion of Sony's plan to raise prices, despite  
18 concerns, which led them to "ask . . . LGC for cooperation. If Japanese companies, LGC and SDI  
19 cooperate on prices, expect that Chinese companies would have no choice." The topic of SONY-  
Ericsson Europe follows, with Sony stating that it is going to Europe to announce a price hike in the  
next week, and "[a]lso hopes that LGC will raise prices of SONY Ericsson."

20 (c) Under the heading "LG Chem's Response," the meeting minutes read:

- 21 • Mentioned that we understand SONY's opinion enough and  
22 that we would be cooperative.
- 23 • After the Division leader returns to Korea, and discusses with  
SDI, and would report the related policy as soon as possible.
- 24 • The reason why Executive Vice President Hong had a prior  
25 meeting with our competitor SONY was to achieve cooperation  
26 among companies in order for the growth of the healthy Li-Ion  
27 industry. Today, rather thanked for specific cooperation request  
for Industrial Cooperation. Delivered an opinion hoping for  
more frequent meetings between companies and having a  
meeting on a regular basis if possible.

- LG delivered an opinion that it wants to cooperate with SONY on Polymer, and it wants to advance into Polymer along with SONY because Polymer customers are negative about Single Supplier.

82. On June 30, 2004, the following executives from Sony and Samsung met at the Sony Energy Company Headquarters Meeting Room:

Implicated Company	Employee Attending Collusive Meeting	Executive's Title
Sony	Nakagawa Yutaka	President
	Kamiyama Hirokazu	PCC Div. Business General Manager
	Naito Toshiaki	PCC Div. Cellular General Manager
	Katahira Taku	Marketing General Manager
Samsung	Joonghyun Lee	Executive Vice President
	Jinkun Lee	Vice President
	Yoan Oh	General Manager
	Insang Joen	General Manager
	Heeseung Yoo	General Manager

(a) Sony President Nakagawa delivered “welcoming statement,” stating that Sony was “Very close friends with Samsung. Has visited Samsung several times to discuss cooperation in memory Stick.” He stated that he was “Glad that SDI and Sony have been competitors, but *also have been able to cooperate with each other at the same time as entities participating in the same business*” and that he “Wish such a relationship would continue.”

(b) The conspirators proceeded to communicate historical and forward-looking detailed production figures for 2003, 2004, and 2005 for the “Cellular market” and the “Note PC market.” The conspirators then discussed polymer, and communicated that “Sony desires to have competitiveness in technology rather than compete through price only.” The conspirators held discussions “[r]egarding the recent Note PC market and the fluctuation of cylindrical price.” The conspirators continued that “Taiwanese pack makers have surplus stocks → Increase in production capacity → Some cell makers have began [sic] to reduce the price” and that “[t]his is a risky situation in that price goes down in spite of the increase in cost.” The conspirators continued that “Sony is not reacting with price. *If Sony reacts with price, it will ruin the market. Therefore, should refrain from lowering price.*” Another version of Samsung’s meeting report was translated as stating, “This is a dangerous situation where cost is increasing while price is going down. Sony is not

1 responding with price. If it responds, then the market will be destroyed so price reduction must be  
2 suppressed.”

3 83. Documents produced from LG’s files reflect that the minutes of *this collusive*  
4 *meeting between competitors were shared with LG*, even though LG did not attend the meeting. In  
5 an internal document produced from LG’s files, the same meeting is described in a June 30, 2004  
6 document entitled “Sony Meeting Result Report” which recounts a meeting held between Sony and  
7 Samsung SDI at Sony Energy Company meeting room. The report describes the welcome greetings  
8 by Sony’s President: “[i]t was good in that [Samsung] SDI and Sony, as competitors and  
9 *companies in the same industry at the same time, could cooperate each other, and hope that this*  
10 *kind of relationship will continue.*” The report further states that “Sony’s President visited Samsung  
11 several times for the “mutual cooperation on [m]emory [s]tick.” At the meeting, the companies  
12 shared market information such as demand forecast for cellular phones, notebook PCs, PDAs, and  
13 digital cameras, and agreed to have another meeting.

14 84. GS Soft Energy (SGS) and Sony met again on July 2, 2004, from 6:00 p.m. to 10:00  
15 p.m. with SGS’s “Head of Production Planning Division GM Nakahita” attending, and they  
16 communicated regarding detailed production unit figures for April and May of 2004, broken down  
17 by cylindrical and “rectangular” units. The report of this meeting between Sanyo and Sony was  
18 found in the files of Samsung produced to Plaintiffs – demonstrating again that even where a meeting  
19 was attended by two competitors, the conspiratorial discussions were shared with their co-  
20 conspirators.

21 85. On July 28, 2004, Samsung met with the following executives from Matsushita  
22 Battery from 3:00 p.m. to 5:00 p.m. at Osaka Matsushita Battery: “Global Management Group GM  
23 Akihiro Shimizu,” and “Global Marketing Overall Management Department GM Masaya Niko.” The  
24 conspirators shared their companies’ production forecasts for 2004, 2005, and 2006 and reinforced  
25 that “There is no plan for cylindrical expansion in 2004.”

26 86. Later on July 28, 2004, Samsung met with the following executive from GS Soft  
27 Energy (SGS) from 6:00 p.m.-10:00 p.m. at a restaurant in Osaka regarding “Production  
28 Headquarters Planning Department GM Kazunori Nagahataa (Kazuniro Nagahataa).” The

conspirators communicated regarding “SGS Capa [capacity] – Japan #2, 6, 7, 8, 9 each 600,000/month, #12 line 1 million/month” and “Shanghai #3,4,5 each 600,000/month, #10 line 1million/month” and “Polymer 500,000/month, 2 lines” and other capacity figures.

87. On July 29, 2004, Samsung met with executives from NEC – Tokin from 2:00 p.m.- 4:00 p.m. at “Tokyo NEC Energy Device Headquarters” with these attendees from NEC:

<b>Implicated Company</b>	<b>Employee Attending Collusive Meeting</b>	<b>Executive’s Title</b>
NEC	Motohiro Mochizuki	Battery Business Department, Business Planning GM
	Taniguchi Hiromichi	Business Overall Management, Business Strategy Department
	Kazuhiko Sato	Sales Implementation Dept.
	Takashi Yoshitaka	Sales Implementation Dept.

The conspirators communicated various detailed forecasts, including a “Cell demand forecast” for “rectangular/LIP” for 2004, 2005, and 2006,” and detailed capacity information.

88. Later the same day, July 29, 2004, from 5:00 p.m. to 7:00 p.m., Samsung met with the following executives from Hitachi Maxell at Tokyo Hitachi Maxell:

<b>Implicated Company</b>	<b>Employee Attending Collusive Meeting</b>	<b>Executive’s Title</b>
Hitachi Maxell	Shigehiro Kakumoto	Energy Solution Business Group Business Planning GM
	Seiji Sumoto	B to B Sales headquarters Battery Sales GM

The conspirators communicated regarding various “demand forecast” projections and production capacity information.

89. On July 30, 2004, Samsung met with the following executive from Sanyo Battery at Tokyo Sanyo Battery from 1:00 p.m. to 3:00 p.m.:

<b>Implicated Company</b>	<b>Employee Attending Collusive Meeting</b>	<b>Executive’s Title</b>
Sanyo	Hiroshi Noguchi	Mobile Energy Company, Strategic Business Unit

The conspirators communicated regarding Sanyo’s 2003 “sales profit rate 10% range” and a “2004 sales amount 210 billion yen, sales profit 17% target.” The conspirators further communicated regarding demand forecasts including a “Cell demand forecast” regarding “[r]ectangular/polymer demand for mobile phone use” and “cylindrical / rectangular” demand. The conspirators further

discussed, regarding the “Toshiba takeover and SGS related,” that “[a]s of June 2004, there is no change in the plan to expand rectangular 5M/month from 47M/month (cylindrical 16M, rectangular 30M, polymer 1M) Capa until the end of the year.”

**2. Examples of Defendants’ continued conspiratorial meetings and communications in 2005.**

90. On February 17, 2005, Samsung had a collusive lunch meeting with “LG VP Jang Soon Kim,” and “VP Jin-Gun Lee.” The conspirators communicated regarding 2004 sales volume, and regarding a “‘05 1st quarter sales forecast.” LG communicated that “Because of the after effect of the ‘04 cylindrical quality problems” that “it will be difficult to exceed 9 million cells per month from January to March ‘05 (around 3M cylinders, around 6M rectangles, 1M or less polymers.” The conspirators further communicated regarding the “Nanjing factory operating status (cylindrical Capa: 2M/month, rectangle: 2M/month)” and details on “Polymer sales status” and an update on the expansion of two polymer lines.

91. Samsung and LG further discussed “Price Cooperation,” and that “[i]n an oversupply market situation, while it is difficult to cooperate on each and every case, for certain PJTs by each customer, both companies agreed to cooperate to stand up against the Japanese business when necessary.” The conspirators further discussed the “LG Chemical CEO’s perspective on the battery business,” including that “For the time being, look at it as if there won’t be any battery facility expansion (Postponing the ‘05 Nanjing expansion of 8 million was a good decision).” Going forward, both companies agreed to communicate regarding price levels. Finally, Samsung’s meeting notes indicate “Criticized that all the purchasing agents of HP, Dell ODMs are Spoiled.”

92. From February 21, 2005, through February 25, 2005, Samsung met with its competitors Sanyo, Sony, Matsushita, GS Soft Energy (SGS), NEC-Tokin, and Hitachi Maxell, again discussing detailed supply and demand issues. Samsung stated internally after these meetings that “[c]ompanies are trying to refrain from adding new lines due to declining profitability and recognition of oversupply.” It further stated “[i]t is the situation of the decline of selling price and oversupply, thus, the overall situation of the industry for 2005 is expected to be difficult,” and that it

1 *“Requested to refrain from adding lines competitively, and each company seems to be willing to*  
2 *refrain from adding new lines.”*

3 93. Specifically, the following executives from Samsung and Sanyo met on February 21,  
4 2005, from 4:00 p.m. to 6:00 p.m. at the Sanyo Electronics Co., Mobile Energy Company  
5 Conference Room in Ueno, Tokyo:

Implicated Company	Employee Attending Collusive Meeting	Executive's Title
Samsung	Jong Ho Kim	Deputy General Manager, Battery Marketing Department
	Seung Won Lee	Manager, Planning Department
	Hee Seung Yoo	SDI Japan Office, General Manager
	Young Taek Cho	SDI Japan Office, Deputy General Manager
	Dong Seop Lee	Manager, Samsung SDI Japan
Sanyo	Mr. Noguchi	General Manager, Business Strategy Unit

6 The conspirators communicated in detail regarding production line capacity for cylindrical,  
7 prismatic, and polymer, and the “Plan to add lines” and “[f]ocusing on cost reduction rather than  
8 price.”

9 94. On February 22, 2005, the following Samsung and Sony executives met between  
10 2:00 p.m. and 4:00 p.m. at the SONY Co. Energy Company Conference Room, in Shinagawa,  
11 Tokyo:

Implicated Company	Employee Attending Collusive Meeting	Executive's Title
Samsung	Jong Ho Kim	Deputy General Manager, Battery Marketing Department
	Seung Won Lee	Manager, Planning Department
	Young Taek Cho	SDI Japan Office, Deputy General Manager
	Dong Seop Lee	Manager, Samsung SDI Japan
	Sung Joo Park	Staff
Sony	Mr. Nagamine	General Manager, Business Planning Department
	Mr. Aoki	Manager (Business Planning Department)
	Mr. Katahira	General Manager, Sales Department
	Mr. Ishiharada	Manager, Sales Department
	Mr. Nakayama	Manager, Sales Department

12 Just as before, the parties communicated in detail on a host of detailed subjects. The conspirators  
13 communicated and one or both *“[r]equested that companies refrain from building additional lines.”*

1           95.     On February 22, 2005, executives with Samsung and NEC-Tokin met to again  
2 communicate regarding a host of confidential business information.

3           96.     On February 24, 2005, executives with Matsushita and Samsung met between  
4 3:00 p.m. and 5:00 p.m. at the “Matsushita Batteries Conference Room” in Moriguchi, Osaka to  
5 again communicate regarding a myriad of confidential business topics, including that “Matsushita  
6 has not manufactured 2.0Ah made of Mn, but will use Mn for 2.2Ah” and that it “[e]mphasized that  
7 *this is to reduce cost of materials, not to sell at low prices.*”

8           97.     On February 24, 2005, executives from Samsung and GS Soft Energy (SGS) met at  
9 “[a] Restaurant in Downtown Osaka” between 6:00 p.m. and 8:00 p.m. to again communicate  
10 regarding numerous confidential business topics.

11          98.     On February 25, 2005, executives from Samsung and Hitachi Maxell met between  
12 10:00 a.m. and 12:00 p.m. at the “Conference Room in Maxell factory” in Ibaraki, Osaka to again  
13 communicate regarding numerous confidential business topics.

14          99.     On March 14, 2005, Samsung’s “Jin Gun Lee (Managing Director, SDI)” met with  
15 LG’s “Jang Soon Kim (Managing Director, LG Chemical)” at a coffee shop between 4:30 p.m. and  
16 6:00 p.m. to communicate regarding numerous confidential business topics. Regarding “Cell Prices,”  
17 they “Discussed pricing of 2.4Ah cell in connection with cell sold to Simplo and Dell, and asked for  
18 \$2.60.” The collusive meeting notes continue “However, participants seem to have agreed to  
19 approximately \$2.70 (SDI’s Price: \$2.80 (February)) – (will follow up).”

20          100.    Samsung and LG met again on May 23, 2005, to communicate regarding confidential  
21 business topics.

22          101.    Samsung and Sony met again on July 19, 2005, to discuss confidential business  
23 topics, between 3:00 p.m. and 4:30 p.m. in Tokyo at the “SONY Corporation Energy Company 6th  
24 Floor Conference Room.”

25          102.    On July 20, 2005, Sanyo and Samsung met again to discuss confidential business  
26 topics, between 1:00 p.m. and 3:00 p.m. in Tokyo at the “Sanyo Electric Co., Ltd. Mobile Energy  
27 Company Conference Room.” The conspirators communicated that “The business got much better  
28

1 because of the Co [cobalt] price fall, only need to save the fixed cost” and that “[f]or the sales price  
2 reduction rate, planned 10% Cylindrical, 20% Rectangular.”

3 103. On July 22, 2005, Samsung again met with Hitachi Maxell to discuss confidential  
4 business topics, between 9:00 a.m. and 10:50 a.m., in Osaka at the “Osaka, Ibaraki Market Maxell  
5 Factory Internal Conference Room.” Defendants discussed that “Hitachi has no plans to enter the  
6 Polymer focused market.” The conspirators further agreed that they “*[m]ust cooperate in terms of*  
7 *control over industry* → Outsourcing is possible too.”

8 104. An internal LG document dated September 26, 2005 includes a business trip report  
9 and describes an LG visit to Sanyo/MB and states: “The *objectives of these meetings were to create*  
10 *direct contact points between the top managements of LG Chem and Japan’s major battery*  
11 *companies, SANYO and MBI/share information.*” The report also described the purpose of the  
12 meeting to “establish cooperative relationship between the Battery Association of Japan (President:  
13 Mr. Ishida of MBI, Vice President: Mr. Honma of SANYO) and the Battery R & D Association of  
14 Korea. The report detailed market conditions and pricing, and said “*it is the mission for the industry*  
15 *to explore a new market and to avoid over-heated competition.*”

16 105. On October 26 and /or 27, 2005, Samsung again met with Matsushita in Osaka to hold  
17 conspiratorial discussions. For example, with respect to “Price” the conspirators communicated that  
18 “[t]here is an opinion that especially towards SMP [the packer Simplo], the current price might be  
19 maintained.” With respect to “Cooperation from now on,” the conspirators “[s]uggested regular  
20 meeting at the level of once every three months” with the “[n]ext time ‘06 January Seoul” and  
21 further detailed the executives to contact “[i]n the case of necessary mutually urgent opinion  
22 exchange.”

23 106. On November 3, 2005, Samsung and Sony executives again met, this time at the “SDI  
24 Headquarter[s] Office” to discuss their collusive goals, including the “Polymer market.”

25 107. On November 14, 2005, Samsung and Sony’s executives again met to collusively  
26 discuss confidential business topics. Samsung’s meeting notes reflect that the conspirators have been  
27 meeting “2-3 times a year since 2004.”  
28



1           108. On November 16, 2005, Samsung and Sanyo's executives again met to discuss  
2 confidential business topics, agreeing that "[t]rust is solidified through continuous information  
3 exchange meetings with Sanyo" and discussing "SDI opinion on matters such as whether or not to  
4 actively enter Cylindrical 2.0Ah." The conspirators further discussed "[c]ylindrical high capacity  
5 (above 2.4AH)" and that "For Mobile Phone: '05 - '06 demand +8~10%, selling price Δ 15%" and  
6 "For Note PC: '05-'06 2.4Ah or more capacity products show demand +20%, selling price as Δ 10%,  
7 forecast for the sole expansion in the market." Regarding "Cylindrical Business," the conspirators  
8 communicated that "HP's low price model 2.0Ah demand is large, but price at below U\$2.0 is a  
9 problem."

10           109. An undated document entitled "2005 - 2006 Marketing Expense Result" refers to  
11 expenses incurred for numerous business meals between LG and its competitors, including Samsung,  
12 MBI, Sony, and Sanyo.

13           **3. Examples of Defendants' Continued Conspiratorial Meetings and**  
14           **Communications in 2006**

15           110. On March 20, 2006, Samsung executives met with NEC executives Mr. Oyama (the  
16 General Manager, Energy Devices Business Unit, Sales Department) and Mr. Omori (from the Sales  
17 Department). They met from 1:00 - 2:40 p.m. on the 10th Floor of the NEC-Tokin Conference  
18 Room in Chiyoda, Tokyo. The parties collusively communicated on a number of subjects, for  
19 example, regarding NEC's projected demand from customers Nokia, Motorola and Siemens, and  
20 further communicated regarding NEC's sales ranking of NEC customers including Cannon, Kodak,  
21 Nikon, Olympus, Casio, and Techwin. The parties further communicated regarding the "NEC-Tokin  
22 Trend," specifically, that "Target capacity of 7.5 million units / month through productivity  
23 improvement (Xiamen, China in particular) (mentioned capacity of 7.5 million units / month at the  
24 Information Exchange Meeting in February 2005)" and that NEC was "Considering adding lines to  
25 reach 10 million units / month by the second half of 2006 - Considering adding 1 line which is bigger  
26 than the existing lines" and that "Design capacity is 7.5 million units per month. The actual  
27 production volume is less than the full capacity. (5 million units sold per month as of the date of  
28 meeting in February 2005)." The parties further collusively communicated regarding NEC's detailed

1 projected production figures, broken down by “Capacity/Month (# of Lines)” for NEC lines in  
2 Tochigi, Japan, Xiamen, China, and Wujiang, China. The parties further collusively communicated  
3 regarding NEC’s “Plan to supply prismatic batteries to Apple (I-pod: hard disk type)” and “Entry  
4 into the Polymer Battery (pouch battery) Market -0.3 million units / month per line capacity for 3  
5 lines; operating in Wujiang, China.” Regarding “Plant Operation in China,” Samsung’s meeting  
6 minutes reflect “There is no sale to local; through NEC corporation, sold or imported to NEC or  
7 Japan.”

8 111. On August 7, 2006, Samsung again met with Sanyo to discuss confidential business  
9 topics, this time in Tokyo between 5:40 p.m. and 8:20 p.m. at a “restaurant near Roppongi.” The  
10 conspirators discussed their “[h]ope that the 3 companies (Sanyo, SONY, SDI) will lead the market  
11 with stability with the golden section. okay to compete on technology, but refuse competition based  
12 on sales price.”

13 112. On August 8, 2006, Samsung and GS Yuasa again met to discuss confidential  
14 business topics, in Kyoto between 4:10 p.m. and 6:00 p.m.

15 113. On August 9, 2006, Matsushita and Samsung again met to discuss confidential  
16 business topics, between 1:00 p.m. and 2:20 p.m. at the “Osaka, Moriguchi Matsushita Secondary  
17 Battery Company Conference Room.”

18 114. On September 8, 2006, LG and Samsung again met to discuss confidential business  
19 topics, and to communicate that with respect to “E-bidding,” “LG is very sensitive to SDI’s pricing  
20 policy.”

21 115. An October 10, 2006 internal LG email with the subject line “(Important) HP Supply  
22 Review meeting in Seoul” from Young Sun Kim (General Manager, LGCAI LA Office) describes a  
23 meeting between LG and HP. The main purpose of HP’s visit to Korea is “to secure cell supply and  
24 demand” and to discuss pricing issues. The email also refers to Samsung SDI’s previous visit to HP  
25 where HP requested continued production of 2.0Ah, and Samsung SDI made it clear that it is hard to  
26 continue to produce 2.0Ah starting from 2Q and that SDI will concentrate on high capacity such as  
27 2.8Ah/2.6Ah/2.4Ah. The email states that as this might lead to HP’s conversion to 2.2Ah, “please  
28 double check SDI’s direction and check again that SDI does not cut cell prices.”

1                   **4.       Examples of Defendants’ Continued Conspiratorial Meetings and**  
2                   **Communications in 2007**

3                   116.     In February 2007, a collusive meeting occurred between Matsushita (Panasonic) and  
4                   SDI/Samsung. The meeting appears to be triggered by a rise in cobalt prices, as cobalt is a large  
5                   percentage of the cost of manufacturing a battery cell. For Matsushita, Mr. Katsube and Mr. Shimizu  
6                   attended the meeting. Attendees for Samsung were Mr. HK Yeo; Mr. MH Jeong, and Mr. Kim. The  
7                   conspiratorial meeting was held in a private room at a traditional Korean barbeque restaurant near  
8                   the Shilla hotel, a location specifically selected because the attendees would not easily be seen by  
9                   others. HK Yeo of Samsung was (and is) in charge of Samsung’s office in Japan. Mr. Yeo was the  
10                  person primarily responsible for making pricing recommendations for cell prices to his boss, JG Lee,  
11                  who had the ultimate responsibility. Mr. Yeo had the responsibility to recommend pricing of cells,  
12                  and had pricing authority for cells used in computers and cell phones.

13                117.     In this February 2007 meeting, the conspirators discussed ways they could counter the  
14                increase in cobalt prices. Specifically, they exchanged forecasts of cobalt pricing, discussed their  
15                concerns over the rapid increase of cobalt prices, and agreed to raise cell prices. During the same  
16                meeting, the conspirators discussed using the previous three (3) month average of cobalt price  
17                increases as a mechanism to be reflected in the battery cell prices for each following quarter. For  
18                example, if the previous three (3) month cobalt average price increased by \$10, then the price of a  
19                cylindrical cell would proportionally rise by \$10.

20                118.     On February 23, 2007, Matsushita and Samsung again met to discuss confidential  
21                business topics at a restaurant in Seoul “because in early February Mr. Shimizu in charge of  
22                marketing at M Company [Matsushita] proposed to discuss market situation following the sharp  
23                increase in cobalt price.” The conspirators communicated that “[i]n previous years cobalt price  
24                skyrocketed at the end of the year and dropped in January, but the price is not dropping even now at  
25                the end of February and continues to soar so there is a concern of the serious situation in 2004  
26                repeating.” The conspirators further communicated their “*hope to mutually exchange the market*  
27                *situation with regard to the sales price for the 2Q volume so that the business can move towards a*  
28                *positive direction.*”

1           119. Samsung and Sony again met on March 14, 2007 between 1:00 p.m. and 2:30 p.m. at  
2 the “Tokyo, Shinagawa Sony Meeting Room” to discuss confidential business topics.

3           120. Sanyo and Samsung again met on March 14, 2007 between 6:00 p.m. and 7:30 p.m. to  
4 discuss confidential business topics.

5           121. Samsung and GS Yuasa again met on March 15, 2007 between 10:30 a.m. and 12:00  
6 p.m. to discuss confidential business topics.

7           122. Samsung and Matsushita again met on March 15, 2007 between 3:00 p.m. and 5:00  
8 p.m. to discuss confidential business topics.

9           123. Another incriminating email chain begins March 19, 2007 and ends March 20, 2007.  
10 Samsung’s MH Jeong, the Senior Manager, Marketing Team, Energy Business Division, wrote to  
11 Panasonic’s Mr. Shimizu and Mr. Katsube that, “We want to talk about your safety technology on  
12 PRL and PSS. So please call Mr. Yeo. His Cell phone number is . . .” But in truth, Mr. Yeo has  
13 nothing to do with safety technology. This email was code indicating that Mr. Jeong was asking for a  
14 collusive discussion, but did not want to put in writing what it was about. Mr. Yeo, after speaking  
15 with Panasonic, emailed Mr. Jeong on March 20, 2007 at 5:16 p.m. regarding the “Telephone  
16 conversation with P Company” and the “Request for price increase star[t]ing this week.” Mr. Yeo  
17 continued that the “Increase (Proposal)” was “Start with 10~13% increase and hope to end with  
18 8~10%. (Bottom)” and that “Hope to apply to all models” and “Time to apply the increase: starting  
19 from 4/1” and “Other company trend – Sanyo: hopes for 8~10% - Sony: 10% level (will end with  
20 less than 10% since starting with 10%).” At 1:28 a.m. later that day, Mr. Yeo forwarded his email,  
21 stating “Strictly confidential, complete security requested” to Samsung’s Ki Seop Lee, Young Hoon  
22 Suh, and Won Taek Chang.

23           124. As noted above, Samsung’s Mr. Yeo reported on the content of the phone  
24 conversation with “P Company” – also code (for Panasonic) and “Issue for D” – also code (for Dell  
25 Computer). The email also referenced the need to get “Accept on the pack price from Company H,”  
26 code for Hewlett Packard). The document mentions a concern about secrecy – this was because of  
27 antitrust issues. The information received by Samsung/SDI in this document, about Sanyo and Sony,  
28 came from Mr. Katsube of Matsushita. And Mr. Yeo later learned that Matsushita and Sanyo talked

1 to each other because he got a phone number for a Sanyo employee from Mr. Katsube of Matsushita.  
2 When Mr. Yeo asked for Sanyo's contact information from Mr. Katsube he was given the name of  
3 Mr. Tatchihara.

4 125. An internal LG email dated May 11, 2007 with the subject line "Price-related update"  
5 sent from Hee Kwan Ra (Account Manager, Battery Notebook Business, CRM Team) to  
6 jhlee@popmail.lgchem.com (multiple recipients) updates the ongoing price progress between LG's  
7 customers and "S Company" and begins by stating "*please delete this email upon reading.*" The  
8 email reports that Asus completed price discussions with "S Company," but Asus asked for rebate  
9 which "S Company" declined. According to the email, "S Company" asked LG to decline Asus's  
10 request as well.

11 126. An internal LG document dated June 5, 2007 entitled "SDI Meeting Report" discusses  
12 a meeting held on June 4, 2007 at Yeon ChunGee, a restaurant in Korea, attended by General  
13 Managers of LG and SDI, as well as Planning and Development personnel. Topics discussed at the  
14 meeting included sales plans, production capacity, and "how to cooperate between LG Chem and  
15 SDI."

16 127. Not all meetings between these conspirators involved only two defendants. A  
17 conspiratorial meeting between Samsung, Matsushita and Sanyo took place in the middle of June  
18 2007, in the Shinagawa district of Tokyo at a restaurant. The meeting was attended by Mr. Yeo (of  
19 Samsung/SDI), Mr. Tatchihara (of Sanyo) and Mr. Katsube (of Matsushita). The three companies  
20 agreed to raise the price in the third quarter of 2007 using the same cobalt average price increase  
21 formula. The three companies also agreed on the bottom line (a price floor) of their selling price – at  
22 or around \$2 – \$2.30 for the 2.2 cell product. The bottom line price was achieved along with the  
23 cobalt price increase in June 2007. LG Chem later also agreed to the formula and increase in prices.

24 128. A July 15, 2007 internal LG email thread with the subject line "Regarding the second  
25 price increase" from Jae Min Park to Joon Ho Lee, and copied Min Jae Park and Jae Kil Kim, states  
26 "Basically, Suwon/Japan's S and M Companies increased a price by a combined 30 cents for the  
27 first/second rounds in total. In the case of Suwon, the second round price increase level was 10~12  
28 cents, and Japan's S by more than 20 cents because it didn't raise much in the first round, and

1 Japan's M Company by 15 cents in the second round." On information and belief, "Suwon" refers to  
2 Samsung, "Japan's S" company refers to Sony or Sanyo, and "Japan's M Company" refers to co-  
3 conspirator Matsushita.

4 129. On July 15, 2007, a series of email exchanges between Joon Ho Lee (VP, in charge of  
5 Battery Notebook Business), Jae Min Park (Senior Manager, Battery Notebook Business, CRM  
6 Team) and Jaegil Kim share price increase information of "Suwon's S Company," "Osaka  
7 Company," and "Japan's M Company," such as level of price increase. The email from Joon Ho Lee  
8 states, "in the July 7 meeting with Suwon Company, we checked that Osaka Company and M  
9 Company across the sea are already conducting the second round of price increase and also that  
10 Suwon Company also began the work last week." On information and belief, "Suwon S Company"  
11 refers to Samsung, "Osaka Company" refers to Sanyo as its headquarter is there and "Japan's M  
12 Company" refers to co-conspirator Matsushita.

13 130. A September 27, 2007 internal LG email thread with the subject line "Fw: (Important)  
14 Bosch RFQ strategy" from Jae Min Park to Yong Wook Chung discusses pricing and production  
15 information gathered from Bosch. Jae Min Park concludes the email with "[f]or more exact model  
16 prices, I will share with you tomorrow after the final discussion with S Company. . . ."

17 131. An October 5, 2007 internal LG email with the subject line "Bosch Price," from Yong  
18 Wook Jung to Joon Ho Lee states, "The price agreed with Manager Moon of SDI Frankfurt is as  
19 follows: SDI 1st G: 2.10-2.20 . . . 2nd G: 2.30-2.40 (the same as above) LG Chem 2nd G: 2.29 USD  
20 (supply 2nd G only, the bottom price is 2.25 USD) SDI is 16:00 on 9th, and 15:15 on 10th. -End-"  
21 SDI refers to competitor Samsung/SDI.

22 132. On November 30, 2007, Jae Min Park told Joon Ho Lee in an internal LG email with  
23 the subject line "Customer Meeting," that "In regards to an S Company meeting, S Company  
24 informed me that is it uncomfortable attending a meeting due to company internal issues and that is  
25 would contact soon." Mr. Lee responded to Mr. Park on December 2, 2007, "As far as I was able to  
26 find out, they seem to be under a *special investigation by the Prosecutor's Office*. As an external  
27 explanation, they are saying that they are restraining from contacts with other companies due to Fair  
28 Trade Commission's investigation, *which sounds to be somewhat of a lame excuse*."

1                   **5.       Examples of Defendants’ Continued Conspiratorial Meetings and**  
2                   **Communications in 2008**

3                   133.     A January 26, 2008 email thread between Jae Min (“Jerry”) Park from LG and  
4                   Ushiyama Naoyuki from Sony in Japan discussed a meeting that they attended in Taiwan, and  
5                   potential future meetings. Park emailed Naoyuki on January 25, 2008 to introduce himself as the  
6                   person “in charge of cylindrical cell sales biz in LG Chem.” Park refers to a meeting they previously  
7                   had in Taiwan, and states that the “reason I sent the email to you suddenly is I would like to meet  
8                   you again and exchange the market information for each other biz.” Park further states that he “will  
9                   visit Tokyo from 28th, Jan to 30th, Jan. If you are available in this period and O.K. to meet us, I  
10                  would like to meet you in any place in Tokyo.” Naoyuki responded he “will be available at 11:00-  
11                  12:00 on Jan. 29th at our HQ in Shinagawa.” Park accepted the invitation to meet at the headquarters  
12                  in Shinagawa on January 29th, and listed LG’s attendees: “John Lee (Sales, VP), Jerry Park (Sales,  
13                  GM), and Paul Kwon (Sales, Japan account manager).” Park stated he would contact Naoyuki again  
14                  before the meeting, and provided him with his mobile number in case Naoyuki needed to reach him.

15                  134.     A January 28, 2008 internal LG document entitled “SANYO Meeting Minutes”  
16                  describes a meeting held that day at Narita Airport between LG executives and “General Manager  
17                  Ikegami (GM, overseas biz)” of Sanyo during which they discussed future exchanges of market  
18                  information, customer demand, capacity, pricing, and agreeing that information bearing on prices  
19                  and production costs should “*not be opened to the customers.*”

20                  135.     A January 31, 2008 email with the subject line “Meeting Minutes regarding ‘SA’  
21                  meeting,” from Jae Min Park (Senior Manager, Battery Notebook Business, CRM Team) describing  
22                  the same meeting referenced above, attended by LG and Sanyo, which took place on January 28,  
23                  2008 at Narita Airport. The email begins by saying “regarding this matter, *please delete it upon*  
24                  *reading.*” At the meeting, the companies exchanged market information and discussed demand, SA’s  
25                  capacity, and prices. As for continued collusive discussions, LG “*made suggestions of consistent*  
26                  *[m]arket information exchanges in the future, and ‘Sa’ also showed positive response.*”

27                  136.     In a February 11, 2008 email with the subject line “About price adjustment,” LG’s Jae  
28                  Min Park, wrote to LG’s Jae Kil Kim, and copied Joon Ho Lee, and stated that “Regarding

1 cylindrical cell price increase, things are going as below. Please take into account. – Effective date:  
2 3/1 (March/April/May) – Price increase: by 10% minimum – Suwon S Company’s Rationale:  
3 Although the Co[balt] Price was \$30 in the past increase, Co price of \$40 is applied to the months of  
4 March/April/May (three months). Therefore, it is inevitable to increase the price at least by 10%.”  
5 LG’s email regarding S Company continued, stating “Considering current Co[balt] price increase, it  
6 plans to mention in advance that additional price increase is unavoidable for June/July/August (three  
7 months). (\$40->\$50).” LG continued that “Therefore, it [S Company] plans to raise price twice,  
8 first by at least 10% for March/April/May, and second by at least 10% for June/July/August . . . LG  
9 Chem, after Suwon S Company completes notification, will also notify its customers of the price  
10 increase, and start to apply from March 1.”

11 137. A February 27, 2008, internal email thread from Jae Kil (“Albert”) Kim to Joon Ho  
12 Lee advised Lee of the status of price increases, and the pricing implemented by competitors  
13 including Samsung SDI, Sony, and Sanyo. Joon Ho Lee responded “Members in the office in  
14 Taiwan, You did a good job.” In response to Lee’s email Jae Min Park reported “***Today, I received***  
15 ***[a] call from Suwon to reconfirm the price increase, and [] Suwon said that it does not have any***  
16 ***problem with raising the price according to the contents mentioned last time.*** LGC also asked for  
17 support. Regarding this, LGC mentioned that they shouldn’t be worried about it because LGC is  
18 aimed to carry out in addition to what was mentioned last time. General Manager Kwon, Sang Cheol  
19 asked me to explain the contents of the price increase. I would appreciate if Vice President gave me  
20 your opinion whether I am allowed to open the contents to him.” On information and belief,  
21 “Suwon” refers to LG’s competitor, Samsung/SDI.

22 138. On February 27, 2008, LG executives met with General Manager Ikegami of Sanyo at  
23 the Akasaka restaurant. Among other things, they discussed production, capacity, customer  
24 information, future pricing information, and efforts to keep information from their customers  
25 concerning their pricing strategies and costs of production.

26 139. An internal LG document entitled, “‘SA’ Company Minutes” (Sanyo is later  
27 identified as the meeting participant) describes a meeting that took place on February 27, 2008 at the  
28 Akasaka restaurant. Attendees from LG were Joon Ho Lee (VP, Notebook Business), Deuk Yong



1 Kwon (Notebook CRM Team); in attendance from Sanyo was Mr. Ikegami (General Manager,  
2 Overseas Business). They discuss capacity issues, and the need to check on competitors' production  
3 plans (Sony, MBI). Next to the section labeled "Regarding Price," it says:

- 4 • Check Sanyo's price increase logic
- 5 • The price increase, this time around, reflects price hikes in raw  
6 materials including Cobalt, but did not mention the specific  
7 logic.... Regarding price increase, need to deliver a message  
8 again that the formula should not be open to customers.
- 9 • Expressed positively to LGC's proposal, but mentioned  
10 indirectly that it's not easy for [Sanyo] not to open the formula  
11 because of strong request of customers....Discuss the timing of  
the second round of price increase.
- Regarding LGC's mention, did not say specific yes/no opinion,  
but gave just a basic answer that they would raise prices if they  
need to reflect increase factors.

12 The companies discuss production capacity, product development, and relationships with various  
13 packers. In conclusion, LG notes that Sanyo says it "want[s] to maintain a communication channel  
14 with LGC in the future, and requested this meeting with the intention of maintaining continuous  
15 communication."

16 140. A March 5, 2008 internal LG email circulated a February 29, 2008 meeting minutes  
17 report that LG executives met with General Manager Matsumoto of Panasonic to discuss production  
18 capacity, customer information and a plan to increase prices. During the meeting it was confirmed  
19 that prices would be increased, and that LG would follow up with General Manager Matsumoto  
20 during the week following the meeting "regarding the price increase level."

21 141. A May 13, 2008 internal LG email thread with the subject line "(revised) 'M'  
22 Company meeting minutes," which attaches meeting minutes, contains an email from Joon Ho Lee  
23 (VP, in charge of Battery Notebook Business) describing a meeting held on May 9, 2008 between  
24 Joon Ho Lee, Deuk Yong Kwon of LG and General Manager Matsumoto of "M" Company at the  
25 Ana Hotel in Tokyo. The companies discussed capacity and price and proposed "to take a common  
26 or cooperative line toward customers." Lee also asked Assistant Manager Kwon to "immediately  
27 create the Toshiba Supplier Meeting Summary." The meeting minutes attached to the email also  
28 states that "General Manager Matsumoto plans to visit Korea in the second week of June (An

1 additional meeting with LGC is planned). When it comes to the detailed information of each  
2 company, promised to exchange information between the two over the phone.” On information and  
3 belief, “M Company” refers to co-conspirator Matsushita.

4 142. On May 16, 2008 at 1:14 p.m., LG’s Joon Ho Lee emailed LG’s Jae Min Park and Jae  
5 Kil Kim, and copied LG’s Sunghwan Kim, Heekwan Ra, Byung Ung Jang, and Jung Won Lee, and  
6 stated “I would like to share the following information acquired from SDI. . . . (Please share the  
7 following[] with overseas branch offices and local members as well as with other related departments  
8 within the Division, if necessary.) – Planning to increase prices in June (approximately by US  
9 \$0.16/Cell) – (Regarding this price adjustment, SDI shared information about Sony’s movement and  
10 agreed that it would lead the price increase.)

11 143. LG’s Mr. Lee continued that “There was a proposal for setting up a dinner meeting  
12 with our division leader (with Senior Vice President JS Lee) around June, and both companies  
13 exchanged opinions on strengthening working-level employees cooperation. To team leader Mr.  
14 Park . . . please check the information about the current communication channel with SDI, and also  
15 the June price increase. I wish that the Taiwan branch office will also figure out the movements of . .  
16 . other Cell Makers and share the information.”

17 144. A June 11, 2008 internal LG email thread with the subject line “(Taiwan Office)  
18 Report on competitors’ price increase,” Sang Woo Kim (Manager, Battery Sales Team) reported  
19 internally about planned price increase by LG’s competitors including Sony, Samsung SDI, MBI,  
20 and Sanyo. Jae Kil Kim (Senior Manager, Battery Notebook Business, CRM Team) also describes  
21 three options in terms of timing of LG’s price increase and concludes that “it might be better to join  
22 other companies’ price increase.”

23 145. An internal LG document contains meeting minutes of an August 8, 2008 meeting  
24 between LG and Panasonic at the Lexington Hotel, attended by Joon Ho Lee, Jae Kil Kim and Deuk  
25 Yong Kwon of LG, and General Manager Matsumoto of Panasonic. At this meeting the conspirators  
26 shared information about capacity, customer status and battery market outlook, price, Panasonic’s  
27 customer strategy, SDI’s entry to Japanese makers, 4Q price, verified information by each customer  
28 and others. The minutes further state that “LG asked for a meeting with a person in charge of

1 Panasonic's power tool, and Panasonic mentioned that it would set up a meeting if there is an  
2 opportunity."

3 146. An August 12, 2008 internal LG email with the subject line "(Sharing) P Company  
4 meeting minutes" from Deuk Yong Kwon (Manager), attaching a document entitled "'P' Company  
5 meeting minutes" states "[p]lease delete the attachment upon reading." On information and belief,  
6 "P Company" refers to co-conspirator Panasonic.

7 147. A September 4, 2008 internal LG email with the subject line "Market information  
8 080904" from Joon Ho Lee (VP in charge of Battery Notebook Business) shares information  
9 acquired regarding [Samsung SDI]'s current line status, production information, and pressure on  
10 [Samsung SDI] from one of its customers for price cut. Also mentions Osaka S Company's current  
11 status with [Toshiba] and L companies in Japan with respect to price adjustment. The email also  
12 states that [Samsung SDI] plans to have a series of opinion exchanges with overseas companies.

13 148. A September 11, 2008 internal LG email with the subject line "Market information"  
14 from Jung Han Park (Manager, LGCAI NY HQ) reports one of LG's customer's pressure on LG for  
15 price cut and states that "LGC too will have to discuss changing market dynamics with [Samsung  
16 SDI] and others, and prepare our official position. . . ."

17 149. A September 29, 2008 internal LG email thread with the subject line "Report on HP  
18 price adjustment plan," from Joon Ho Lee discusses "double-check Sanyo's price decrease level,"  
19 and refers to Samsung SDI and its planned price cuts and ranges. In an effort to remain discreet, Lee  
20 directs recipients "***From now on, when you create a document, let's omit the cover page if possible.***  
21 ***Simplicity is the best.***"

22 150. On October 10, 2008, representatives of LG met with Sanyo at Narita Airport to  
23 discuss capacity, market plans, pricing to customers, and expected price trends.

24 151. An October 13, 2008, internal LG email with the subject line "Market Information  
25 081013," and attaching Sanyo meeting minutes, from Joon Ho Lee stated "As attached, I am  
26 reporting to you what was discussed in the last week's meeting with Sanyo, based in Osaka, Japan,  
27 and Sales Person-In-Charge." Lee further stated, "***We exchanged opinions on preventing activities***  
28 ***to destroy price mechanism within the market, and for that matter, both are willing to maintain***

1 *and expand company-to-company communication about related market information.”* Lee  
2 concluded his report stating “*P.S. Please make sure that each related personnel takes a look at this*  
3 *email and delete it.* If you let me know what needs to be verified, I will check the information and  
4 share it with you.”

5 152. An October 12, 2008 internal LG email with the subject line “Report on the business  
6 trip to Japan,” from Min Ho Chung (Senior Manager/Marketing, Mobile Energy Division) to Joon  
7 Ho Lee attaches detailed minutes from meetings with Japanese battery makers, Sanyo and Panasonic.

8 (a) The Panasonic meeting took place on October 8, 2008 in a meeting room at a  
9 hotel in Osaka. Panasonic participants included General Manager Shimizu (Marketing), Manager  
10 Kondo (Business Planning) and Takagi (Prismatic Sales-Nokia). They discussed general business  
11 plans, market status, customer demand, forecasts, and specific products. The document reflects  
12 exchanges regarding extension plans and other companies in the market. LG and Panasonic made  
13 agreements to limit technology development:

14 LGC) In the process of each company preparing Post 3.0Ah  
15 individually, if companies go in a different development direction . . .  
16 in the future, there is a concern that suppliers would be divided in  
17 several groups or one company might go its own way. Therefore the  
industry needs to minimize development resources and risks through  
reaching a consensus for Post 3.0Ah development by actively using  
outside conferences.

18 Pana) It totally consents to that. It needs to find a way for that.

19 (b) A meeting with Sanyo took place October 9, 2008 in a meeting room at a hotel  
20 in Tokyo. General Manager Noguchi (Marketing/Business Strategy) from Sanyo participated. The  
21 conspirators discussed many of the same topics as were discussed with Panasonic at the October 8,  
22 2008 meeting: forecasts, customers, demands, product development, as well as more concerns about  
23 Chinese company ATL. The conspirators also discussed Cylindrical capacity and sales, with 2009  
24 “expected to be the 1:1 competition between Sanyo and SDI.” The meeting appears to close with a  
25 similar agreement on future product development as with Panasonic:

26 LGC proposal) Regarding the development direction after 3.0Ah, in  
27 order for both companies or the industry to avoid the risks;

28 1) it is needed to share development direction of the industry as a  
whole through conferences, or

1 2) to secure a consensus on the basic development direction between  
2 Sanyo and LGC (it was discussed with the director of BTC before the  
business trip)

3 Sanyo) Until now, the basic direction was the same so it has been done  
4 individually. It has the same idea that there is a need for cooperation  
regarding the difficult issues...which [are] hard to make a decision  
5 alone.

6 Sanyo) 'Do you think SDI has the same idea?'

7 LGC) If necessary, we will find out what SDI is thinking.

8 Sanyo) We will report this to the CEO and ask his opinion.

9 Note) This is perceived that in cooperation, the 2 Korean companies  
are more possible than the Japanese companies (because the  
development direction is same or it's easy to check information.)

10 The meeting concludes with Sanyo expressing that it "[k]nows that recently, [capacity] of separator  
11 makers is insufficient, but fortunately, due to good relationship with Asahi, Sanyo is supplied first."

12 153. An October 13, 2008 internal email with the subject line "Market Information  
13 081013" attaches "SA Company Meeting Minutes." Joon Ho Lee (VP in charge of Battery Notebook  
14 Business) internally reported about the meeting held on October 10, 2008 with Japan's Osaka S  
15 Company at Narita Airport. Topics discussed at the meeting included line extension, production  
16 capacity, and price strategies for each of its customers. The companies "[e]xchanged opinions on  
17 preventing activities to destroy prices within the market" and agreed to "maintain and expand  
18 appropriate company-to-company communication about related market information." The email  
19 continues "*[p]lease make sure that each related personnel takes a look at this mail and delete it*  
20 *immediately.*"

21 154. An October 28, 2008 internal LG email thread with the subject line "Powertool  
22 weekly report," Joon Ho Lee (VP, in charge of Battery Notebook Business) internally shared  
23 information "acquired yesterday regarding the [power tool] business of [Samsung SDI]," stating that  
24 the information will be used for LG's future power tool business strategy. The email describes  
25 production information and power tool customer information.

26 155. A November 12, 2008 internal LG email with the subject line "(Sharing) Phone  
27 conversation with Sa," from Deuk Yong Kwon, reports "I received a phone call today from General  
28

1 Manager I from S Company in Osaka, Japan, and I would like to share briefly what I checked with  
2 General Manager I.” General Manager I contacted Mr. Kwon because Lenovo China had contacted  
3 “S Company” to request a price cut. General Manager I told Mr. Kwon that S Company would not  
4 cut prices, and asked LG to support S Company in refusing to cut prices. On information and belief,  
5 “S Company” refers to co-conspirator Sanyo. The email also describes a discussion about pricing  
6 strategy to other customers.

7 156. An undated document entitled “NEC-Tokin Meeting” recounts a meeting held on  
8 December 5, 2008 between LG and NEC-Tokin at a NEC-Tokin meeting room in Tokyo. At the  
9 meeting the companies discussed battery business trend of the digital cameras and game devices  
10 markets and NEC-Tokin’s production capacity and product roadmap.

11 157. A internal LG document titled “Panasonic Minutes (December 8)” recounted a  
12 meeting between Panasonic and LG on December 8, 2008 in Osaka, Japan, attended by Vice  
13 President Joon Ho Lee (in charge of laptop business) and Deuk Yong Kwon (the laptop CRM 2  
14 team) of LG and Panasonic General Manager Matsumoto (Team leader of Cylindrical sales) and  
15 Katsube (overseas sales Part leader) of Panasonic. The conspirators discussed production, capacity,  
16 supply and demand trends, and coordination of pricing to customers.

17 158. In a December 10, 2008 internal LG email from Joon Ho Lee to Jeong Han Park, Jae  
18 Min Park, and copied Jae Gil Kim and Jeong Oh Kim, with the subject line “Executive Vice  
19 President’s U.S. business trip,” Lee discussed plans to raise prices to HP, and describes Samsung  
20 SDI’s plans to submit new pricing to HP, when it would be submitted, and what the prices were  
21 expected to be.

## 22 **6. Examples of Defendants’ Continued Conspiratorial Meetings and** 23 **Communications in 2009**

24 159. A January 6, 2009 internal LG email with the subject line “Content checked by P  
25 Company,” from Deuk Yong Kwon to Joon Ho Lee recounted discussions between LG and  
26 Panasonic about future pricing to customers for lithium ion rechargeable batteries and strategies to  
27 “defend the selling price” in the face of declines of production costs.

28 160. A February 12, 2009 internal LG email with the subject line “Report on Japanese

1 makers' trends," from Jang Won Huh (Assistant Manager, Global Battery Marketing Team) to Joon  
2 Ho Lee, attaches a report on information from Japanese companies. Mr. Hun wrote "I am reporting  
3 the recently acquired information on 3 Japanese competitors (Sanyo, Sony, Panasonic). . . ." Major  
4 customer demand forecasts are exchanged and compared, as are production development plans for  
5 future technologies, such as car batteries.

6 161. An April 7, 2009 internal LG email with the subject line "Market Info 090407," to  
7 Min Ho Chung, Jae Kil Kim and Hee Kwan Ra from Joon Ho Lee (VP, in charge of Battery,  
8 Notebook Business) shared "information obtained regarding the grand mansion S across the sea. . . ."  
9 The email to S Company's line expansion plan, pricing plan, and its plan for merger with P  
10 Company. The email ends by stating "*please delete as soon as possible*." On information and belief,  
11 "S Company" refers to Sanyo and "P Company" refers to Panasonic.

12 162. A May 14, 2009 internal LG email with the subject line "Report on D Company's  
13 April performance (compared with LGC)" from Young Moon Riew attaches an excel file entitled  
14 "LGC v. SDI Comparison of 2009 Sales," which includes Samsung SDI's sales performance by  
15 product and customer from January to April 2009.

16 163. An October 16, 2009 internal LG email from General Manager Min Ho Chung  
17 exchanges information acquired from Panasonic and Sanyo during meetings, which took place July 8  
18 to 10, 2009, as well as information regarding "yesterday's phone conversation content regarding  
19 Panasonic's cylindrical cell extension." Chung reported "Japanese companies still internally question  
20 about going for 6.5-7M/Month scale, unlike Korean companies." A chart was attached to the email  
21 comparing cell makers and customers' cell demands. Also attached were the meeting minutes  
22 between LG and Panasonic, which reflected discussions of production forecasts, customer demand,  
23 pricing goals, potential extensions, and various products. The email also attached Sanyo meeting  
24 minutes which included a discussion of Panasonic's acquisition of Sanyo stating "The U.S.  
25 government is opposed to the Pana's pushing for acquisition due to the monopoly and oligopoly  
26 issue of the NiMH business." The conspirators compared LG and Sanyo's demand forecasts and  
27 plans for product development. The minutes also include a section for "The talk result between  
28

1 LGC's purchasing director and the division leaders of Asahi kasei and Hitachi kasei (July 9,  
2 Manager Choi in Tokyo)."

3 **7. Examples of Defendants' Continued Conspiratorial Meetings and**  
4 **Communications in 2010**

5 164. A March 12, 2010 internal LG email with the subject line "[Notice] Business leader's  
6 instructions regarding SMP 2Q price," from Jung Won ("Justin") Lee provided a report/meeting  
7 minutes from a March 10, 2010 pricing negotiation/meeting with SMP (packer Simplo). Target and  
8 offer prices were exchanged between the two, and LG "checked various roots" to confirm suspicions  
9 it had about SDI's offer. There was a section in the notes that listed competitor offers to Simplo (next  
10 to the heading it read, "(content checked through PM)"). Under the accompanying chart, was a note,  
11 "SDI/Sony/Sanyo are discussing again." The notes explained that "it is a situation where responding  
12 with the price at the same level as SDI for 2.6Ah and in between MBI/SDI for 2.2Ah is desperately  
13 needed in a position to discuss with SMP." Several "New Bottom Line (Price[s])" are also listed,  
14 noting position amongst competitors. Another section, "Business leader's instruction," states,

- 15 1) Ambiguously say D Company's [SDI] price, which was  
16 identified by contacting D Company's General Manager "Yeo"  
17 before today's meeting, and check whether it is true or not.
- 18 2) Considering the symbolic value of SMP price in the Taiwanese  
19 market, strongly Appeal that the prices of other companies can  
20 ultimately become similar and it can grow into the pack price  
21 battle, and ask back at the same time.
- 22 3) Do not propose the Bottom line price from the beginning, but  
23 propose to the Bottom with some time gap, and when there is a  
24 wide divergence of opinion, prepare for the long-running battle  
25 by earning time, not thinking about ending it today.

26 165. A March 18, 2010 internal LG email thread with the subject line "FW: (Sharing &  
27 Reporting) SMP 2Q price discussion" from Jae Kil ("Albert") Kim provides further information on  
28 the March 10 SMP meeting. Before presenting the information, Sung Hwan Kim wrote, "[b]elow is  
what has to be shared & reported on about the outcome of SMP price negotiation." Detailed notes  
and charts follow, including a section under a price chart called "Background to above prices and  
situation of competitors." Contained in this section is detailed competitor information such as SDI  
contracts, sales forecasts, and price information. One notable portion reads:



1 Was told that LGC prices of 2.2Ah&2.6Ah were higher than [SDI] and  
2 was asked to make price cuts at the same level, so requested prices of  
3 domestic competitors and was able to check them exceptionally (by  
4 competitor e-mail, A strict embargo on releasing this piece of  
information is very much appreciated except for the recipients of this  
e-mail.)

5 166. A September 14, 2010 internal LG email thread with the subject line "Apple line  
6 allocation for Apple – K93 price response" from Yongsun Kim includes detailed information on  
7 Apple negotiations, LG and SDI. On information and belief, "K93" refers to Apple's tablet, the iPad.  
8 The email thread also refers to several meetings between the competitors. The email thread  
9 demonstrates an arrangement between SDI and LG regarding allocating sales to Apple. One email to  
10 LG Vice President Yong Wook Chung from Young Sun Kim, General Manager, states that after  
11 "checking [with] SDI today . . . it would be better just to observe the progress" regarding an Apple  
12 deal. Another message from Kim explains, "[b]ased on LGC's logic, prices should be matched. . . .  
13 [W]e need to consider action plans after checking competitors' information once again."

14 167. On November 5, 2010, Min Ho Chung emailed Daeil An, Young Sun Kim, Yoo Sung  
15 Oh, Sang Woo Kim and Yong Chan Kim a report with the subject line "Movement of SDI." Chung  
16 wrote: ***"Please use this for your information to grab an idea of the current situation, and a strict  
17 embargo on resending it is requested."***

18 168. On November 15, 2010, Dong Woo Lee followed up: "Talked to Senior Manager  
19 Park Jong Seon of SDI sales (used to be in charge of Apple) who has been seconded to Cupertino  
20 Office since last week, over the phone today, but couldn't talk long as he is now on a business trip. It  
21 is likely that we can meet and talk properly once he comes back to Cupertino." Lee then added what  
22 was discussed over the phone: "1) [h]ave been asked recently to increase volume, like us, regarding  
23 K93; 2) [h]ave been requested for supply of 2M/M or more ([s]eems to be more than that); 3) and it  
24 is also difficult for SDI to deliver all the requested volume; [w]as told that it had been thought that it  
25 would be impossible to supply all since Apple does over forecast every time, regarding too much  
26 total volume." Next day, Lee updated his previous mail by stating, "Was told that the business trip  
27 site is currently Atlanta, fyi."

28 169. In late 2010, Samsung and LG, including directly through LG's San Jose, California

1 office, in furtherance of Defendants' conspiracy, expressly agreed on price levels to be charged for  
2 sales to Apple computer relating to Apple's iPad. Specifically, on December 1, 2010, at 5:03 PM,  
3 LG Chem America, Inc.'s Dong Woo Lee, a/k/a "Don Lee" or "Donny," emailed several LG  
4 executives from his San Jose, California office located at 2450 N. First St. #400. He wrote to Young  
5 Wook Chung a/k/a (Andrew (Y.O.) Chung) and four others that, regarding "K93 related information  
6 – D Company Meeting," that "I update the mutually shared K93-related information [meaning iPad  
7 information] at the meeting with D Company [meaning Samsung SDI America] today. 1. Price: \$  
8 0.42~43/Wh range. We said that our price is a little bit higher than \$0.38, and told them not to cut  
9 the price since we currently plan to increase the price to \$0.42 level."

10 170. LG's Yong Wook Chung wrote back that same night to Dong Woo Lee in San Jose, at  
11 12:37 a.m., copying also LG's Young Sun Kim, Sung Jun Cho, Jung Ho Yoo and Hyunhwa Kim,  
12 stating "It's good information. Please send me the feedback after identifying if they [Samsung] can  
13 move in the same price range." LG's Young Wook Chung further wrote that same day, "We plan to  
14 go ahead with at least \$0.50, and the counterpart's [meaning Samsung] vice president Oh, Yo Ahn  
15 agreed on this, so please try to create the same kind of feeling with the counterpart, and never make a  
16 sound in doing so."

17 171. LG's Mr. Chung wrote again that same day to Dong Woo Lee in San Jose, stating that  
18 "We said that we would raise the price at least by 10% from the existing price, and they [Samsung]  
19 also promised to commit."

20 **8. Examples of Defendants' Continued Conspiratorial Meetings and**  
21 **Communications in 2011**

22 172. A February 16, 2011, internal LG email sent by Jae Min Park relays information he  
23 gathered at a "Quality Summit" regarding a February 18 HP e-bidding auction and bidding positions.  
24 He reports that "STL/SDI is not interested. SMP will try to secure at least No. 2 position....It is  
25 expected that DNP is trying to secure No. 1 or No. 2 position. We have not checked Sanyo's case."  
26 Park goes on to explain LG's strategy for "minimize[ing] a pack price decrease" and "maximize[ing]  
27 profitability through raising cell prices for all packers...." He concludes by saying he will call with  
28 more information.

1           173. A March 3, 2011, internal LG email thread with the subject line “(CRM 1 Team)  
2 Competitor’s trend on Q2 cell prices for packers, from Jae Min Park discusses information regarding  
3 SDI’s price increases.”

4           174. A March 22, 2011, internal email from LG’s Paul Kwon shares information regarding  
5 “Sanyo[’s] supply status after the Japanese earthquake.” Kwon writes that this information was  
6 received via phone call with “General Manager I in HK today.”

7       **B. The U.S. Subsidiary Defendants Directly Participated in the Conspiracy**

8           175. The U.S. Subsidiary Defendants participated in Defendants’ collusion regarding  
9 Lithium Ion Batteries in several ways, including by (1) directly colluding with competitors; (2)  
10 employing executives who were involved in conspiring with foreign competitors; and (3) acting at  
11 the Foreign Defendants’ direction as to pricing and supply decisions of the U.S. Subsidiary  
12 Defendants for U.S. customers in furtherance of the conspiracy.

13           176. With respect to categories (2) and (3) in the preceding paragraph, the Foreign  
14 Defendants’ executives, including those who participated in collusive meetings while in their  
15 positions at the Foreign Defendants, were routinely dispatched, seconded or sojournd to the U.S.  
16 Subsidiary Defendants to conduct the business of the subsidiaries, and engaged in collusive conduct  
17 while at those subsidiaries. Those foreign executives had actual and apparent authority over pricing  
18 decisions that were carried out through U.S. Subsidiary Defendants. In other words, the foreign  
19 executives dictated, controlled, set, directed and/or directly influenced the prices that their U.S.  
20 Subsidiary Defendant counterpart sold Lithium Ion Batteries in the U.S., to U.S. customers.

21           177. Moreover, to ensure adherence to the conspiratorial understanding between  
22 Defendants, foreign executives exercised their pricing authority through direct discussions with U.S.  
23 Subsidiary Defendant personnel. Without doing so, the Defendant conspirators could not have  
24 successfully achieved their unlawful objective of restraining price competition for sales of Lithium  
25 Ion Batteries.

26           178. The foreign executives’ relevant pricing communications with U.S. Subsidiary  
27 Defendants’ personnel occurred before, during, and *after* the foreign executives participated in the  
28

1 secret, conspiratorial meetings and communications detailed herein. The foreign executives thus  
2 knowingly and necessarily carried out the conspiracy through the employees of the U.S. Subsidiary  
3 Defendants to successfully implement the Foreign Defendants' unlawful plan.

4 179. The foreign executives therefore legally and factually directed the U.S. Subsidiary  
5 Defendants to set conspiratorially inflated prices for Lithium Ion Batteries.  
6

7 **1. LGCAI's Participation in the Conspiracy**

8 **A. LGCAI's Direct Communications Regarding the Conspiracy**

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1. *Journal of the American Medical Association*, 1997; 277: 1001-1005.

1. *Journal of Management Studies*, 1997, 34, 1, 1-15.

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Figure 1. The effect of the concentration of the *Agrobacterium* suspension on the transformation efficiency of *Agrobacterium* strains. The *Agrobacterium* strains were incubated in the presence of 100 mg/ml of gentamicin and 100 mg/ml of rifampicin. The concentration of the *Agrobacterium* suspension was 10<sup>6</sup> cells/ml. The transformation efficiency was determined by the number of transformants per 10<sup>6</sup> cells. The data are the mean  $\pm$  SD of three independent experiments.

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1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

2. Once the problem is identified, the next step is to define the objectives and goals of the project. This helps to clarify what needs to be achieved and provides a clear direction for the team.

3. The third step is to develop a plan or strategy to address the problem. This involves breaking down the problem into smaller, manageable tasks and determining the resources needed to complete each task.

4. The fourth step is to implement the plan. This involves putting the strategy into action and monitoring progress regularly to ensure that the project is on track.

5. Finally, the fifth step is to evaluate the results of the project. This involves assessing the outcomes against the objectives and goals and identifying any areas for improvement.

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<sup>11</sup> For ease of comparison, citations noted with “IPP-CAC” are to the First Consolidated Amended Class Action Complaint, ECF No. 256, July 26, 2013. The same materials are also cited in the present Complaint.

INDIRECT PURCHASER PLS.' CONSOL. SECOND AM. CLASS  
ACTION COMPLAINT – Case No. 4:13-md-02420-YGR



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**A. Panasonic Japan Directed Panasonic North America Pricing and Supply Decisions**

219. Panasonic Japan directed Panasonic North America's pricing and supply decisions.

For example, Panasonic Japan issued prices to customer Apple Computer through the Panasonic US account team. A December 10, 2008 internal Panasonic email string regarding pricing to Apple included employees from Panasonic US (Panasonic Industrial Co, Global Sales Mgr Tina Phan,

David Martinez; Shauna Peterson, and others) and Panasonic Japan (Yasushi Matsumoto, Keisuke Tanaka, Fukutome Kazutaka, Toshi Katsube, Haruhiko Hayashi and others). Conference calls were planned for Japan/US conversation re Apple. In preparation for the call, Tina Phan told the group that Joe Kelleher (Apple) requested a price quote for Apple by Wednesday, December 10, 2008 at the latest, and Phan requested that Umemura (Pana Japan) provide the cell pricing for Apple. Umemura then wrote back to Tina Phan/David Martinez with the price and volume availability to give to Apple.

**5. Sony North America's Participation in the Conspiracy**

**a. Sony North America's Direct Communications Regarding the Conspiracy**

220. Sony North America directly participated in collusive communications on numerous occasions. For example, an SEL (California) internal slide presentation dated September 26, 2006 contained sensitive, competitive information obtained from competitor LG Chem, including their line status in 2006, their stance on investments, profits and productivity. The source of the information appears to be LG Chem, based on a quote of LG's anonymous executive's comments, "[we] cannot think of 50% share" and "as to pricing, we want to avoid such a drastic price reduction as in the last year." Another slide contains sensitive SDI information, including their entry to Neo in October, 2006, and yield rates. This slide stated that "*per our information exchange with LG Chem, SDI's commitment to polymer is questionable.*"

**b. Sony North America Employed Foreign Executives Who Participated in Conspiratorial Conduct**

221. Sony North America employed or otherwise utilized foreign executives who directly participated in conspiratorial conduct while working at Sony. Those executives' conspiratorial conduct is detailed elsewhere herein. For example, Taku Katahira (General Manager of the Sales Department for Sony Japan) was a participant in collusive meetings with other foreign defendants during the alleged class period. IPP-CAC, ¶¶ 68, 78-84, 960. Mr. Katahira was also involved in the day-to-day pricing activities of Sony's US subsidiary. For example, on July 17, 2007, Mr. Takahira was on an email string along with Sony US employees regarding the Apple and Rim accounts.

1 Robert McCaul of Sony US, asks Mr. Keishi Hayasaka (Sony Japan) to approve the price for Apple  
2 (as proposed during his negotiation with Apple that day). The email is also addressed to Mr.  
3 Katahira and others from Sony Japan.

4 222. On August 11, 2004, high level executives from Sony Japan told high level executives  
5 of LG Chem Korea of its plans to respond to U.S. customers by dispatching five employees to the  
6 United States.

7  
8 223. Sony Corp.'s Japanese employees also frequently travelled to the United States to  
9 oversee its subsidiary's Lithium-Ion Battery-related business in the United States. For example, on  
10 May 2, 2008, Sony executive Kenji Enomoto (Sony Japan) emailed Kenichi Hoshino and Robert  
11 McCaul, telling them that an employee from Sony Corporation (in Japan) would be moving to the  
12 U.S. to help support Apple."

13  
14 **c. Sony Japan Directed Sony North America Pricing and Supply Decisions**

15 224. Sony Japan directed Sony North America's pricing and supply decisions. For  
16 example, on June 22, 2005, Steve Jaska, of Sony U.S. in Texas, indicated in writing to Takeshi  
17 Nakayama of Sony Japan that he needed to get pricing for U.S. customer Dell Computer from Sony  
18 Japan.

19 225. On February 12, 2008, Noriko Kazama from Japan (Core Components Business  
20 Group, Sony Corp.) writes to subsidiary employees Rob McCaul (Senior Manager, CSBD, SONY  
21 Electronics -San Jose, California) and Yuki Walsh (Senior Marketing Specialist of Sony Electronics  
22 in San Diego, California) regarding a pricing proposal to Apple, and stated "I have discussed the  
23 price reduction issue for Apple with our control division and concluded that we would reduce the  
24 price to \$53.10 . . . we would like you to withdraw our pricing proposal that we reduce the price to  
25 \$52.50 from \$53.23 in April . . . we have to ask you to negotiate with Apple again due to the high  
26 cobalt prices."  
27  
28

1           226. Similarly, on August 2, 2008, Keishi Hayasaka (an executive from Sony Corp. in  
2 Japan) emailed Robert McCaul in San Jose, California telling him that the pricing for “Single cell  
3 sample pricing” should be “\$4.00/cell.” Prior to that email, McCaul wrote to Hayasaka requesting  
4 price confirmation regarding “Single cell sample pricing” on August 1, 2008.

5           227. On October 1, 2009, Robert McCaul of Sony U.S. in San Jose, California wrote in an  
6 email that he would be at headquarters in Japan on a business trip and asked the Sony U.S. team for  
7 updates on their Mobile/PC customers so he could get answers from Japan. Sony U.S. gave a status  
8 update on the Motorola account and asked Sony Japan what prices Japan wanted to quote to  
9 Motorola.  
10

11           228. On January 7, 2010, Marcel van den Bogert (Strategic Account Manager of Sony’s  
12 U.S. subsidiary) sent an email to Robert McCaul regarding a trip to Japan. Mr. van den Bogert stated  
13 that Sony Corp. would “prepare proposal of what 18560’s Sony want to quote to Motorola and at  
14 what pricing.” Earlier in the email chain, on September 29, 2009, Robert McCaul wrote that he  
15 would be at Sony’s Japanese headquarters and asked his Sony America team: “Can you please send  
16 me the latest update on each of your respective Mobile/PC customers as I will be having a series of  
17 meeting with the Jigyoubu [operations] ... so please highlight areas where we need  
18 answers/homework support from Japan to close pending issues.”  
19

20           229. On May 9, 2010, Robert McCaul of Sony Electronics -San Jose, California wrote to  
21 Koichi Fukata, Manager of Sony Energy Devices of Japan, regarding the customer RIM, that “[w]e  
22 request that you consider a price competitive with Sanyo (Sanyo Price= below \$3.50).”  
23

24           230. On October 28, 2010, in an email regarding “Dell’s Project Update,” Yosuke Kiyama  
25 in the San Jose, California office wrote to Mike Wu in Taiwan and stated that “This price is officially  
26 approved by Japan.”  
27  
28

1           **6.     Maxell Corp. of America's Participation in the Conspiracy**

2           **a.     Maxell Corp. of America's Direct Communications Regarding the**  
3           **Conspiracy**

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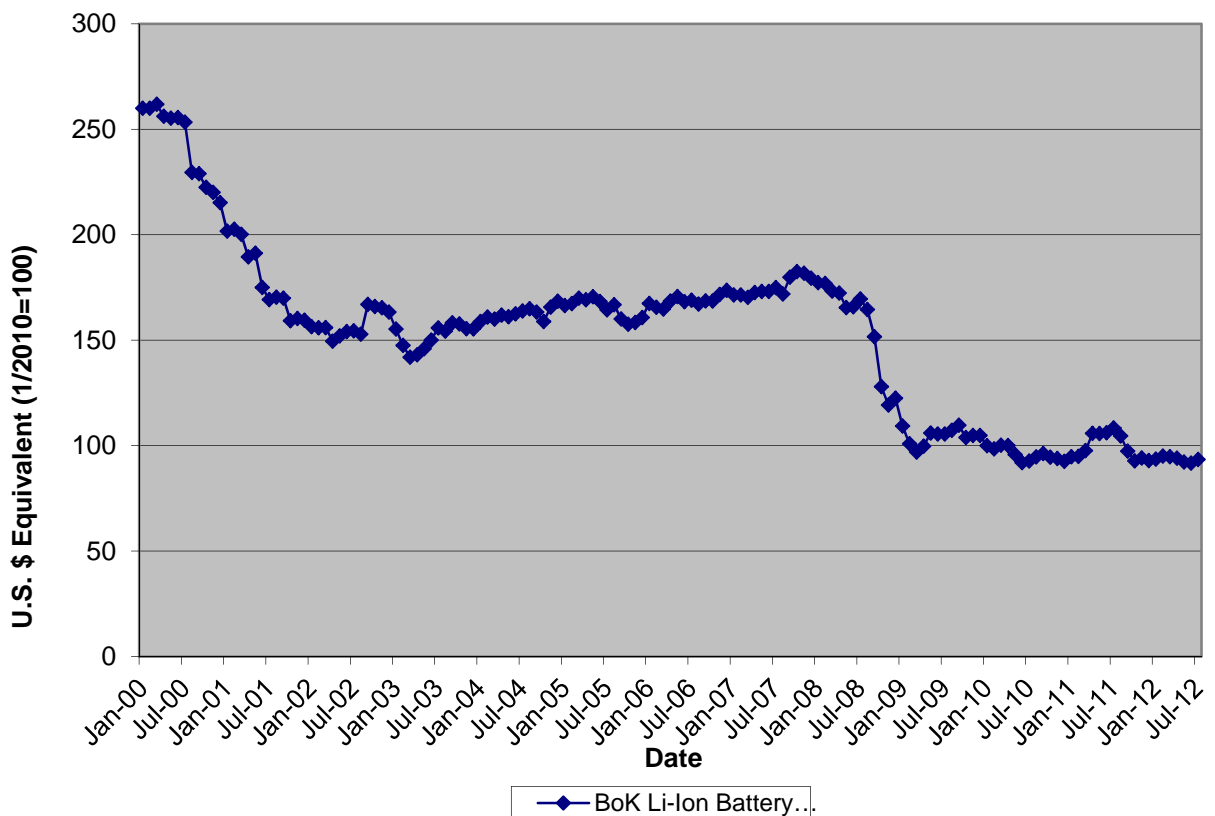
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C. **Economic Evidence Shows Defendants' Conspiracy Succeeded**

1. **Defendants' Conspiracy to Raise LIB Prices Broke Apart Soon After They Received DOJ Subpoenas**

235. Defendants' illegal behavior, alleged herein, artificially stabilized and raised the prices of Lithium Ion Batteries during the Class Period. Lithium Ion Battery prices were higher than they would have been absent the conspiracy. Figure 6 is an index which shows the average selling prices for Lithium Ion Batteries during the Class Period.

**Figure 6: Bank of Korea Lithium Ion Battery Price Index**



236. Coinciding with the worldwide economic crisis beginning in or around 2007, and the market shock to the demand for Lithium Ion Batteries and electronic devices, the prices for Lithium Ion Batteries declined. Beginning in or around January 2008, the prices for Lithium Ion Batteries began to decline. This decline ended in or around January 2009; the price decline during this period was approximately 40 percent.

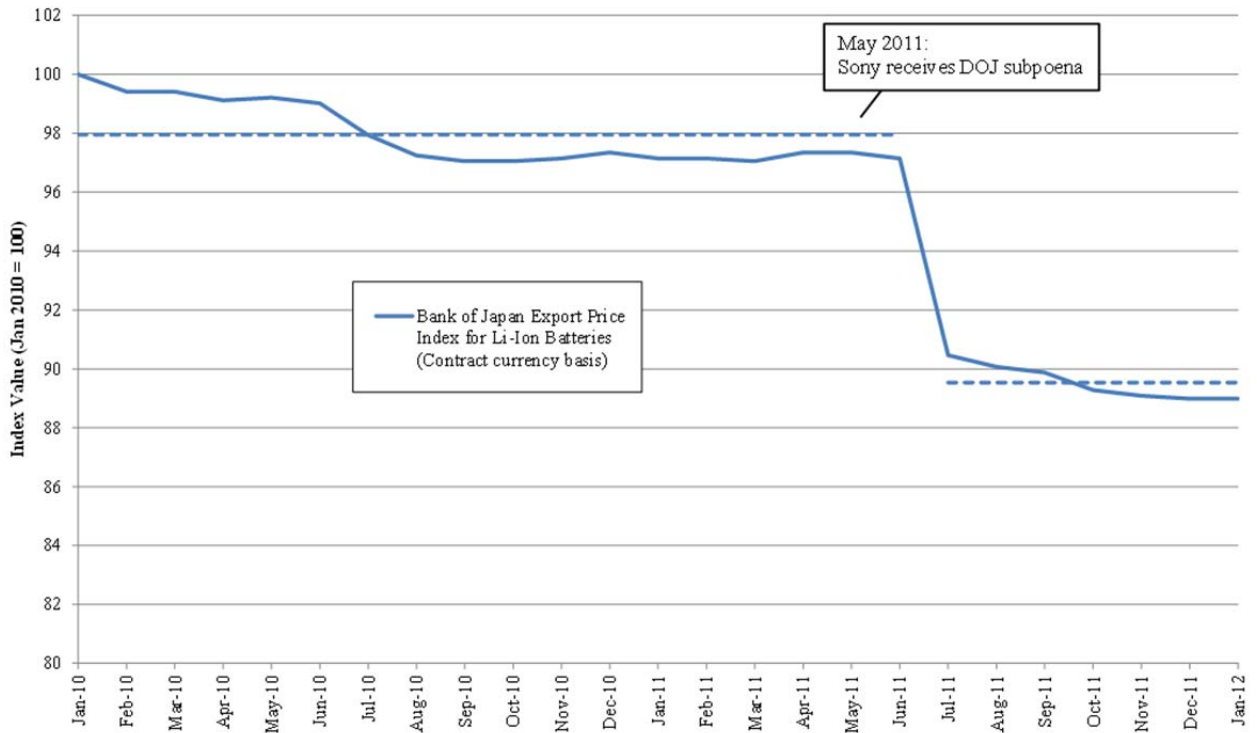
1           237. During this period of declining prices during 2008, Defendants cut production in  
2 response to change in demand and to help stem the decline in prices. Beginning around 2008,  
3 Defendants cut worldwide production for Lithium Ion Batteries by almost 66 percent. This dramatic  
4 cut in production achieved its desired result – the prices for Lithium Ion Batteries stabilized by the  
5 end of 2009.

6           238. Lithium Ion Battery prices remained stable until Defendants received notice in mid-  
7 2011 that they were being investigated for price-fixing Lithium Ion Batteries by the DOJ and the  
8 European Union. Both the Japanese and Korean producer price indexes for Lithium Ion Batteries fell  
9 after Defendants disclosed they were being investigated. In fact, within three (3) months following  
10 disclosure of the investigation in 2011, prices began an approximate 10 percent decline in a mere  
11 three (3) months. Such a price decline would be predicted with the end of a cartel which had  
12 artificially raised prices, and further supports the conspiracy's existence before this time.

13           239. On May 3, 2011, Sony received a subpoena from the DOJ for information on  
14 competition in rechargeable batteries, and disclosed this information in late June. The chart below  
15 shows the Bank of Japan's export price index for Lithium Ion Batteries prior to this announcement  
16 and prices following the announcement. Comparing the average from January 2010 to June 2011  
17 with the average from July 2011 to January 2012, prices fell by nearly 7 percent between June and  
18 July 2011. From July 2011 to January 2012, prices were 9 percent lower. Figure 7 shows the steep  
19 drop in Lithium Ion Battery prices that occurred after the DOJ served subpoenas on Defendants.  
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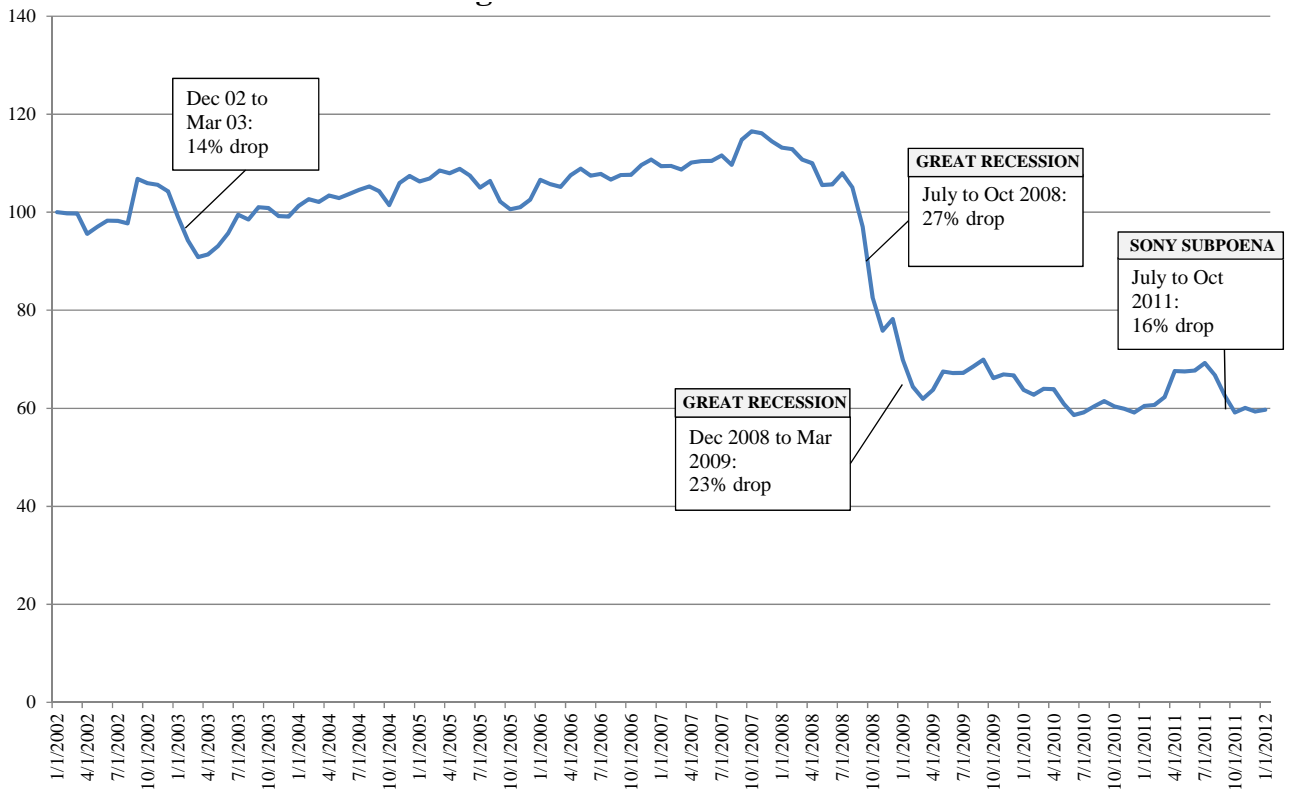
**Figure 7: Prices of Lithium Ion Batteries Surrounding Announcement of DOJ Investigation**



Source: Bank of Japan.

240. Using an additional Lithium Ion Battery price index maintained by the Bank of Korea which spans the Class Period, it is apparent that the drop in mid-2011 is indeed significant. Similar to the Bank of Japan index, the Korean price index also shows a one-month drop of more than 6 percent from August to September 2011 (the drop in the Japanese index occurs from June to July 2011). This 6 percent drop was part of three successive months of price drops that totaled almost 16 percent between July and October. The only other time during the Class Period where similar price declines can be observed is between August 2008 and February 2009, when the industry was experiencing a demand shock due to the effects of the global recession. Figure 8 therefore is a different price index (from the Bank of Korea) which shows Lithium Ion Battery prices from January 2002 to January 2012. Again, this economic data depicts a large and unusual historical price reduction following close in time to the DOJ's investigation.

**Figure 8: Bank of Korea Lithium Ion Battery Price Index and Large Three-Month Price Declines**



Source: Bank of Korea (converted to USD using exchange rates in Bloomberg).

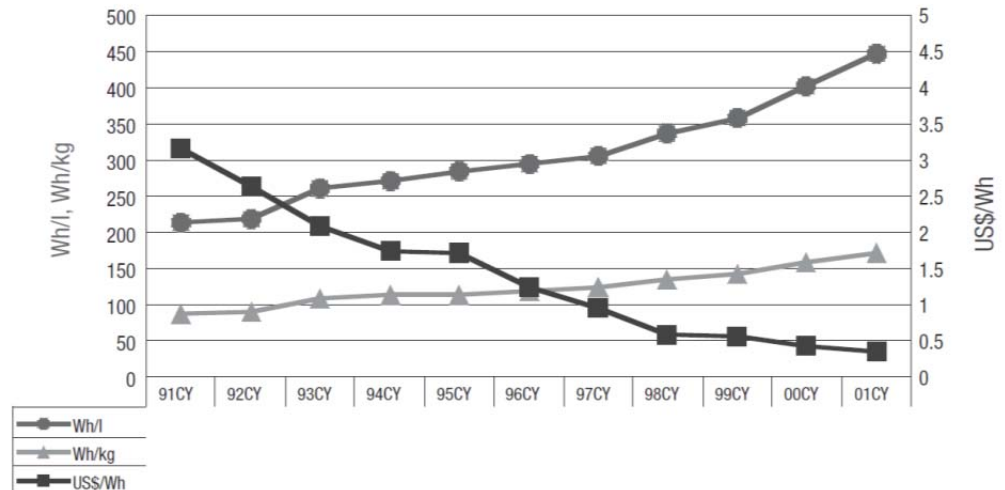
## 2. Prices for Lithium Ion Batteries During the Class Period Defied Industry Expectations

241. Many analysts predicted that given the economics of the marketplace, prices of Lithium Ion Batteries would go down during the Class Period. But prices not only failed to decline throughout most of the Class Period – prices actually rose, defying industry expectations.

242. Lithium Ion Batteries underwent continuous technological change that rapidly improved the energy density of the batteries (watt-hours delivered per weight or volume) and reduced costs. Energy density, measured in watt-hours per kilogram or watt-hours per liter, more than doubled for Lithium Ion Batteries over the decade from 1991 to 2001. Such technological progress continued unabated over the past decade – today, energy density is as high as 250 wh/kg, or

620 wh/l, for Lithium Ion Batteries.<sup>12</sup>

**Figure 9: Performance Improvement and Price Decline in Li-Ion Batteries, 1991-2002**



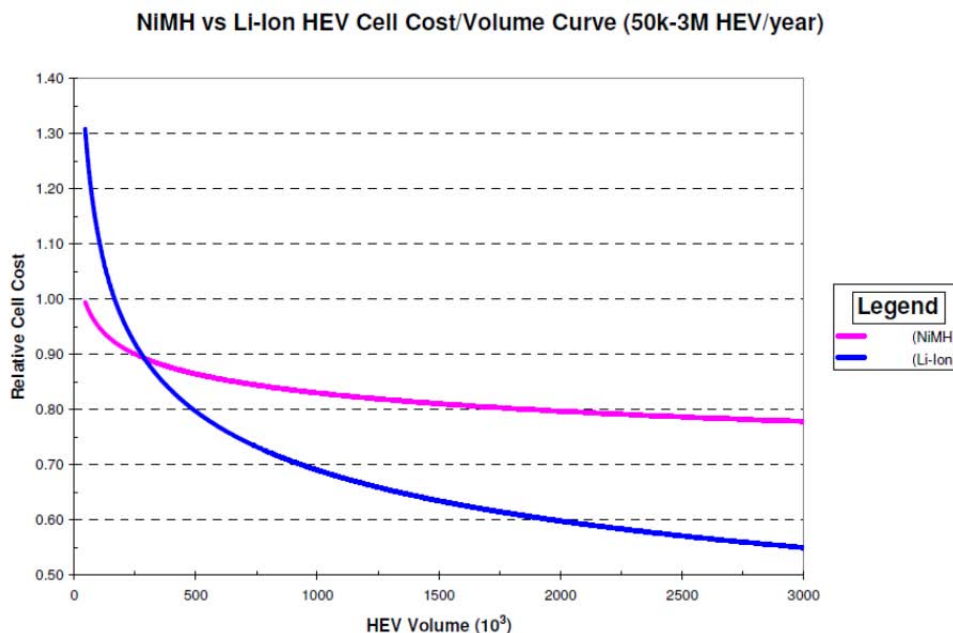
Source: Institute of Information Technology, Ltd. Japan. 2002.

Reproduced from R. Brodd, "Factors Affecting U.S. Production Decisions: Why are There No Volume Lithium-Ion Battery Manufacturers in the United States?" ATP Working Paper 05-01, National Institute of Standards and Technology, U.S. Department of Commerce, June 2005, p. 62.

243. Scientists, engineers, and industry analysts expected to see the declining prices for Lithium Ion Batteries shown in Figure 9 to continue their steep descent during the period following 2002. Numerous technical studies undertaken in the early to mid-2000s predicted that scale economies and learning curves would act to sharply lower cost as production volumes expanded. Figure 10 below is typical of such predictions.

<sup>12</sup> Panasonic Develops New Higher-Capacity 18650 Li-Ion Cells; Application of Silicon-based Alloy in Anode, Green Car Congress (Dec. 25, 2009), <http://www.greencarcongress.com/2009/12/panasonic-20091225.html>.

**Figure 10: Reduction in Li-ion Battery Manufacturing Cost with Scale of Production**



Source: Internal Studies at Ford, taken from presentation by T. Miller, “Hybrid Battery Technology and Challenges,” MIT Technology Review’s Emerging Technology Conference, (September 28, 2006), reproduced in M.A. Kromer and J.B. Heywood, “Electric Powertrains: Opportunities and Challenges in the U.S. Light-Duty Vehicle Fleet,” Publication LFEE 2007-03 RP, Laboratory for Energy and the Environment, MIT, May 2007, p. 36 (hereafter “Kromer and Heywood”).

244. The study cited in Figure 10 also notes the rapid pace of continuing technological improvement: “while the NiMH [nickel metal hydride] battery is nearing fundamental practical limits . . . lithium ion batteries are still improving. With continued improvements in charge storage capability, lithium-ion’s advantage will become more pronounced with the passage of time... Though this trend has slowed somewhat in recent years with the maturation of cobalt- and nickel metal-oxide based lithium-ion batteries, other materials have the potential to allow for continued growth ....”<sup>13</sup>

245. The authors of this 2006 study go on to observe that:

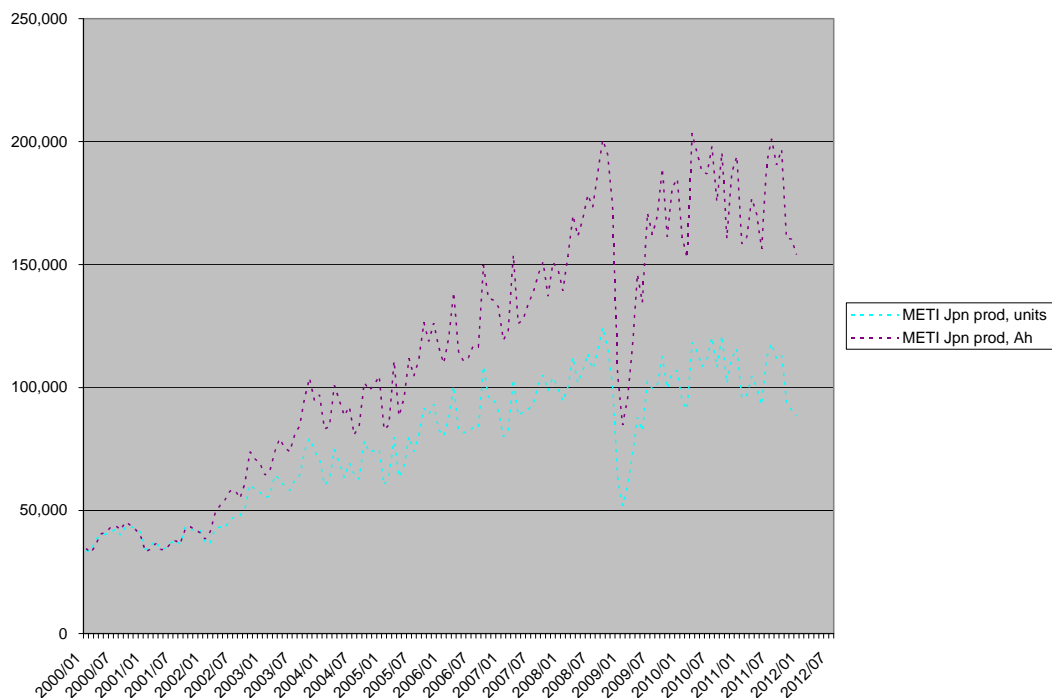
In addition to this fundamental advantage with respect to specific energy and power, lithium-ion batteries also offer the potential for lower cost as the technology matures and production volumes increase. Although more expensive than NiMH batteries today, lithium-ion batteries scale more readily to high volume production hence have greater potential for cost reduction. . . . Perhaps more importantly, while the most expensive constituent materials of NiMH battery are intrinsically tied to the commodity price of nickel (relatively

<sup>13</sup> M.A. Kromer and J.B. Heywood, *Electric Powertrains: Opportunities and Challenges in the U.S. Light-Duty Vehicle Fleet*, Publication LFEE 2007-03 RP, Laboratory for Energy and the Environment, MIT, May 2007, p. 36.

expensive), lithium ion batteries may be made from a number of different fungible materials. . . . Over the longer-term, there is strong potential to transition to even lower cost materials.”<sup>14</sup>

246. As seen in Figure 11 below, which represents production figures for Lithium Ion Batteries manufactured by Japanese manufacturers (responsible for the lion’s share of global production throughout this decade), the predicted expansion in the production volume of Lithium Ion Batteries did indeed materialize. Batteries produced in Japan more than tripled from just below 34 million units in January 2001, to almost 118 million units in July 2011. The power provided by these technologically improved batteries increased twice as fast, by a factor of almost six over the same period, from just over 34 million Ah (amp-hours), to over 200 million Ah in July 2011.

**Figure 11: Increase in Production Volumes for Li-Ion Batteries in Japan 1000’s of Units and Ah**



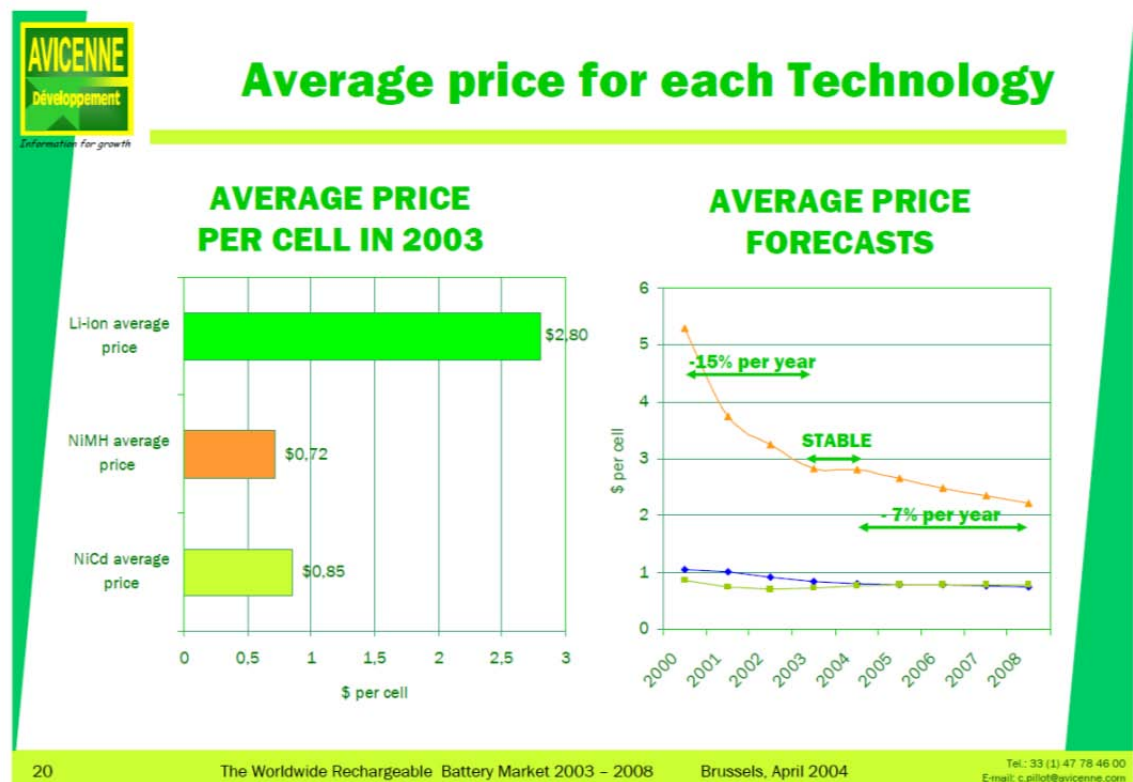
Source: Japan, Research and Statistics Department, Ministry of Economy, Trade and Industry (METI), *Yearbook of Machinery Statistics*, *Monthly Report of Machinery Statistics*, various years.

247. Thus, analysts were confident in predicting continuing price declines in Lithium Ion Batteries at the beginning of this decade. Basic economics supports the notion that these rapidly increasing volumes of production should have been associated with continuing price declines for

<sup>14</sup> *Id.*

Lithium Ion Batteries in a competitive market. After price declines prior to 2002, and flat prices in 2003, industry analysts continued to predict continued annual 7 percent declines in Lithium Ion Battery prices after 2003. However, these continuing price declines predicted by both technologists and market analysts did not materialize because of the formation of the price-fixing cartel alleged in this Complaint. The interruption of this trend in 2003 was viewed merely as a temporary deviation from the expected trend, rather than the beginning of a collusive effort by producers to prevent further declines in prices. Figure 12 shows analysts' predictions that prices would continue to decline as they had done in previous years – but they did not.

**Figure 12: Historical and Forecast Prices for Batteries, April 2004**

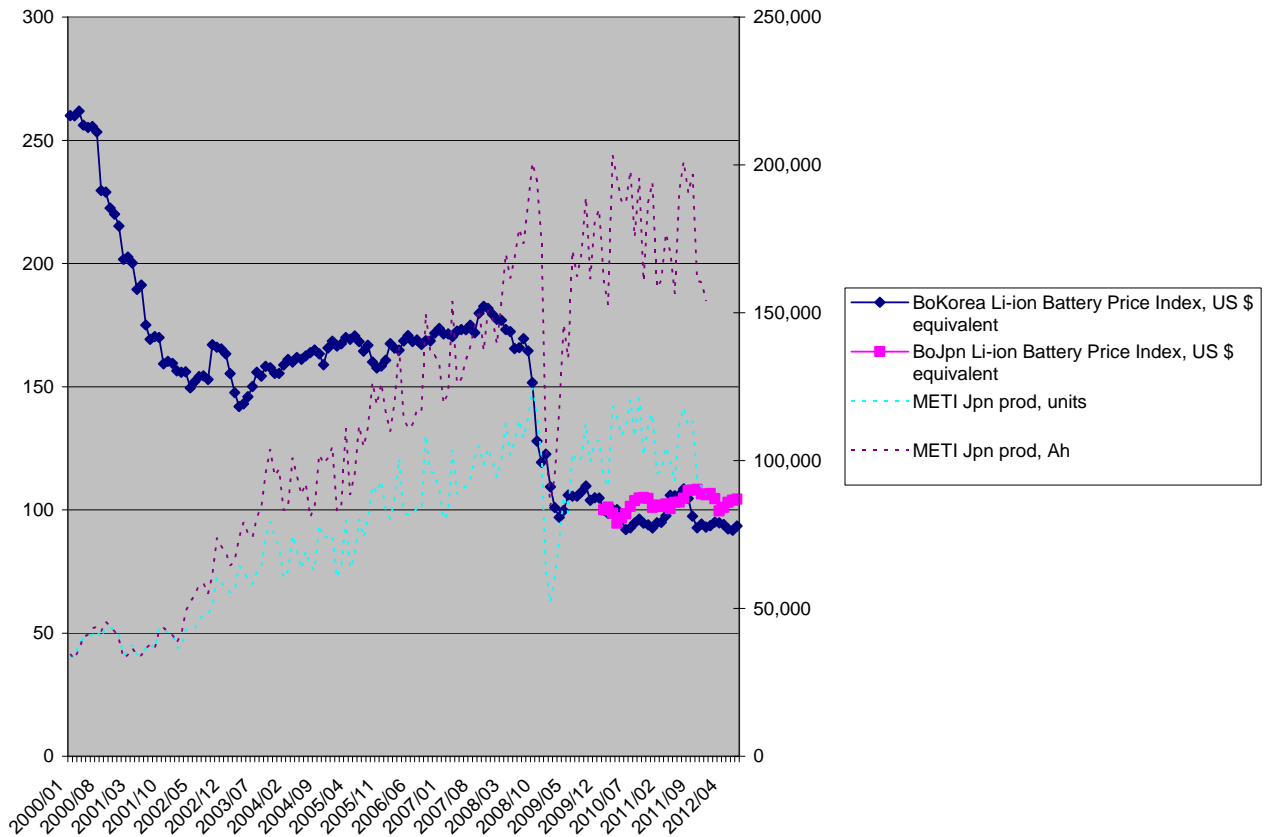


Source: International Association for Advanced Rechargeable Batteries, [www.rechargebatteries.org/MarketDataRechargeableBatteries.pdf](http://www.rechargebatteries.org/MarketDataRechargeableBatteries.pdf).

248. These trends in pricing that defied industry expectations are evident in the official government producer price index for Lithium Ion Batteries constructed by the Bank of Korea, Korea being the second most important location for Lithium Ion Batteries production (after Japan, which did not start producing a Lithium Ion Batteries price index until 2010). A price index, unlike an

average unit value for batteries, controls for changes in mix of size and qualities of batteries being produced.

**Figure 13: Lithium Ion Battery Price Indexes, 2000-2012**



Source: Bank of Korea, Bank of Japan. Price indexes have been converted to dollar equivalents using Federal Reserve exchange rate data.

249. Figure 13 shows that after the decline in prices beginning in early 2000 (triggered by entry of Korean producers into the market), the cartel members managed to arrest any continuing decline in Lithium Ion Battery prices, and, defying industry expectations, even increased prices, over a five year period, from early 2002 through early 2008. This effort was highly successful in not only reducing the rate of decline, but actually elevating Lithium Ion Battery prices until the Great Recession struck in 2008. At that point, as markets for the mobile consumer electronics and information technology products reliant on the use of Lithium Ion Batteries were impacted by the recession, prices started to reduce once again, at an even steeper rate than had been triggered by Korean entry back in early 2000.

1                   **3.       The Defendants' Pricing and Production Levels in Response to the Global**  
2                   **Economic Crisis in 2008 Further Supports the Existence of the Conspiracy**

3                   250.    As the global recession reduced demand for the devices which use Lithium Ion  
4                   Batteries, prices for these batteries also dropped. In fact, prices for Lithium Ion Batteries would fall  
5                   roughly 34 percent from August 2008 through January 2009. Faced with rapidly decreasing prices  
6                   during this time, cartel members sharply cut back production of Lithium Ion Batteries. Japanese  
7                   cartel members dramatically cut production from 125 million units a month in September of 2008, to  
8                   52 million units per month in January of 2009, engineering a reduction in output of 58 percent over a  
9                   period of just four months. (Alternatively, if measured by the power capacity – Ah – of the batteries,  
10                  the same 58 percent reduction occurred). Then, just five months later, Japanese production shot back  
11                  up near pre-economic crisis levels to approximately 103 million units per month.

12               251.    Defendants' near 60 percent reduction in output successfully arrested further decline  
13               in prices, while the continuing restraint in not resuming production growth after 2008 successfully  
14               stabilized prices at a roughly constant level, and stemmed further price declines.

15               252.    Economic principles teach that when producers are behaving competitively, they  
16               expand output to where price just covers the incremental or marginal cost of the last unit produced.  
17               Defendants' reduction in production by 58 percent – only to increase output five months later to  
18               nearly the same production levels (while holding prices the same) – is not plausibly explained by  
19               competitive forces.

20               253.    This production and pricing behavior is better (more plausibly) explained by the  
21               existence of an anticompetitive agreement, because when Defendants raised production a mere five  
22               months later, they maintained prices at the same level as before the reduction in output. In other  
23               words, Defendants' production and pricing behavior would only be consistent with competition if  
24               incremental production costs had somehow been cut by a huge amount – 34 percent – over the  
25               intervening five months. This could then possibly support an inference of competitive prices  
26               remaining at the same levels when production returned to nearly the same levels. But as shown  
27               below, input costs for Lithium Ion Batteries do not explain Defendants' pricing and production  
28               behavior.



1 **D. The Structure and Characteristics of the Lithium Ion Battery Market Plausibly**  
2 **Support the Alleged Conspiracy**

3 254. The structure and other characteristics of the Lithium Ion Battery market are  
4 conducive to cartel behavior, and have made collusion particularly attractive in this market.  
5 Specifically, the Lithium Ion Batteries market: (1) has high barriers to entry; (2) has inelasticity of  
6 demand; (3) is highly concentrated; (4) features a high-level of contact among Defendants via trade  
7 associations and industry conferences; and (5) is characterized by other features supportive of  
8 collusion.

9 **1. The Lithium Ion Batteries Market Has High Barriers to Entry**

10 255. A collusive arrangement that raises product prices above competitive levels would,  
11 under basic economic principles, attract new entrants seeking to benefit from the supra-competitive  
12 pricing. Where, however, there are significant barriers to entry, new entrants are less likely. Thus,  
13 barriers to entry help to facilitate the formation and maintenance of a cartel.

14 256. There are substantial barriers that preclude, reduce or make more difficult entry into  
15 the Lithium Ion Batteries market. A new entrant into the business would face costly and lengthy  
16 start-up costs, including multi-million dollar costs associated with research and development,  
17 manufacturing plants and equipment, energy, transportation, distribution infrastructure, skilled labor  
18 and long-standing customer relationships. As F.H. Sung, chairman and CEO of Simplo Technology  
19 Co., Ltd., the Taiwanese battery pack manufacturer that is a major customer of Defendants and  
20 discussed herein, aptly stated in December 2009, “No amateurs can make good batteries, especially  
21 overnight, as the business calls for major investments and cutting-edge technologies.”<sup>15</sup>

22 257. It has been estimated that the cost to build a plant to manufacture Lithium Ion  
23 Batteries that is capable of producing 3 million cells per month is approximately \$3 to \$4 per cell.  
24 Thus, a plant making 3 million cells per month would cost approximately \$108 to \$144 million. This  
25 estimate does not include the cost of research, development, and engineering that produced the  
26 technology and equipment designs for the plant.

27 <sup>15</sup> *Simplo Technology CEO Self-promotes with Analysis of Li-ion Cell Biz*, Articlesbase  
28 (Dec. 30, 2009), <http://www.articlesbase.com/electronics-articles/simplo-technology-ceo-selfpromotes-with-analysis-of-liion-cell-biz-1642348.html>.

1           258. In addition to the large costs of building a plant, given the nature of the materials used  
2 in Lithium Ion Batteries, any new entrant will be required to comply with various environmental  
3 regulations in whatever jurisdiction such plant is built. Compliance with such regulations will require  
4 extensive testing and the receipt of government approvals, all of which will take many years.

5           259. Moreover, significant patent and/or licensing expenditures are a prerequisite to  
6 competing in the industry. For example, Samsung stated the following in March 2000:

7                     Samsung SDI plans to construct a cooperative relationship with its  
8                     affiliated companies and, together with the Samsung Advanced  
9                     institute of Technology, to obtain the basic core technology and  
                      process technology which are necessary for the commercialization of  
                      the battery.

10                    Samsung SDI has secured a firm position in the battery industry by  
11                    obtaining access to the basic patents and technology for the lithium-  
12                    sulfur battery as well as the lithium-ion battery and the lithium-  
13                    polymer battery. This means that SDI has surpassed the replication  
14                    phase of other advanced products and has stepped into a new phase:  
                      Samsung has secured, for the first time among Korean companies,  
                      competitive and highly qualified technology and products to compete  
                      with Japanese companies *that today hold hegemony in the worldwide  
                      batteries market.*<sup>16</sup>

15           260. In April 2011, GoldSea Inc. reported that “Japan remains the undisputed leader in  
16 battery technology, with 2,206 lithium-ion battery patents registered in the U.S., and two-thirds of all  
17 patents in the field last year. The U.S. was second with 679 and Korea third with 463.”<sup>17</sup>

18           261. Other factors further limit new entrants. For example, in April 2012, Korea IT Times  
19 reported that “China has yet to increase its market share because it has not attained a trusted brand  
20 name, which is essential for success in the industry.”<sup>18</sup> The U.S. Government’s Advanced  
21 Technology Program (“ATP”) (part of the U.S. Department of Commerce’s National Institute of  
22 Standards and Technology) stated the following in December 2006 report titled “Factors Affecting  
23

24                   <sup>16</sup> *Samsung SDI to Take an Equity Share in PolyPlus*, Samsung SDI (March 15, 2000),  
25 <https://www.samsung.com/us/news/455>.

26                   <sup>17</sup> *Japan, S. Korea in Tight Lithium-Ion Battery Race*, GoldSea Asian American Business,  
<http://goldsea.com/Text/index.php?id=10735> (last visited June 30, 2013).

27                   <sup>18</sup> Kim Sung-Mi, *Korean Secondary Battery Leaping 10 years, Overtaking Japan*, Korea IT  
28 Times Global News Network (Apr. 27, 2012), <http://www.koreaitimes.com/story/21199/korean-secondary-battery-leaping-10-years-overtaking-japan>.

1 U.S. Production Decisions: Why are There No Volume Lithium-ion Battery Manufacturers in the  
2 United States?":

3 Because of safety and performance considerations, Li-ion  
4 manufacturers (except those in China) do not sell individual cells.  
5 Japanese cell manufacturers sell only battery packs with safety devices  
6 included. A battery pack can consist of a single cell, or multiple cells  
7 connected in series or in parallel, to give the required voltage and  
8 capacity. Individual cells from major Japanese manufacturers are  
9 available only to outside pack assemblers on approval of their  
10 electronic control circuitry in the pack.

11 Individual cells are available from Chinese manufacturers, but are  
12 often of inferior quality. They often lack the usual safety features in  
13 cell design and electronic controls and thus constitute some danger to  
14 the public. This is not true for responsible manufacturers who try to  
15 match the world standard of performance. The replacement market for  
16 Li-ion cells is minimal. Of the purchasers of a new piece of equipment  
17 such as a cell phone or a notebook computer, about 30 percent will buy  
18 a second battery pack from the OEM. After that, replacement sales  
19 account for less than 2 percent of total battery sales. People typically  
20 buy a new, higher performance notebook computer about the time that  
21 their old battery would need replacement.<sup>19</sup>

22 262. In a detailed July 20, 2012 investor report titled "*Lithium-ion batteries – A Japanese*  
23 *tech growth story?*" Citi Research, a division of Citigroup Global Markets, Inc., informed its investor  
24 clients that "We think that the local Chinese battery makers operate in a market that is basically  
25 independent of the global lithium-ion battery market, as it is a low-end field which Japanese and  
26 South Korean firms do not target and the major sources of demand, such as makers of 'white box'  
27 goods, are in the gray zone." The report continued that "The big Chinese firms of BYD, BAK, and  
28 Tianjin Lishen Battery have entered the consumer electronics battery market but they have quality  
and technology issues. . . ."

29 263. In a 2008 presentation, Tesla Motors noted in a slide titled "Profitability of Li-ion  
30 manufacturing" that "U.S. companies have difficulty justifying this commodity business (GE for  
31 example) and that "[l]arge Asian manufacturers can justify this business by supporting related

32 <sup>19</sup> Ralph J. Brodd, *Factors Affecting U.S. Production Decisions: Why are There No Volume*  
33 *Lithium-Ion Battery Manufacturers in the United States?* at 29-30 (Nat'l Inst. of Standards and Tech.  
34 ATP Working Paper Series, Working Paper 05-01, June 2005), available at  
35 <http://www.atp.nist.gov/eao/wp05-01/wp05-01.pdf>.

1 electronics divisions (cell phones, laptops, cameras, etc.) and through government support.”<sup>20</sup>

2           264. The U.S. Government’s ATP report further stated the following in December 2006:  
3 “Success in the rechargeable market requires knowledge of the electrical requirements for emerging  
4 products that use batteries as well as the ability to generate rapid product improvements to meet the  
5 demand and then to assemble the unit cells into battery packs for use in the device. Most U.S.  
6 producers have lacked this marketing and design/production infrastructure. Large Japanese vertically  
7 integrated, consumer electronics companies have this infrastructure in place. These companies are  
8 major players in both [the] primary and rechargeable battery industries.”<sup>21</sup> The report continued:

9           Japanese companies are geographically closer to other Asian markets  
10 for selling their products, sourcing production, and working with other  
11 makers of portable devices. The Japanese battery supplier is most often  
12 part of a vertically integrated Japanese electronics company. Proximity  
13 to the device designer gives them a significant advantage in developing  
14 new products for the market. In the United States, major battery  
15 producers are “on the outside looking in,” with limited access to or  
16 understanding of the needs of portable electronic device  
17 manufacturers. Device manufacturers such as Motorola and HP do not  
18 share new product concepts and developments with U.S. battery  
19 manufacturers.

20           It is even more difficult for U.S. manufacturers to identify new battery  
21 requirements for devices that are being developed in Japan, the  
22 heartland of portable device developments. The Japanese market is not  
23 readily accessible to non-Japanese companies, making it very difficult  
24 for U.S. battery manufacturers to act as suppliers of the batteries for  
25 new products developed in Japan. As a result, the U.S. battery  
26 manufacturers were unable to take advantage of the introduction of the  
27 Li-ion battery to the portable device market in 1991.

28                               \*           \*           \*

29           The relationship of battery suppliers/manufacturers to the OEM  
30 manufacturers of portable electronic devices follows two patterns. In  
31 the vertically-integrated Japanese electronic companies, device  
32 designers and battery groups are equal partners in developing leading  
33 edge new products. The intensity of market competition in Japan has  
34 resulted in the recognition by both groups that having batteries of the  
35 highest capacity is critical to device sales. Designers of battery  
36 components have advanced notice of the needs of the device designers.  
37 They thus have time to develop a battery with special characteristics or  
38

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39           <sup>20</sup> JB Straubel, *Mobile Battery Market Overview*, Tesla Motors (Sept. 16, 2008),  
40 <http://www.whitehouse.gov/files/documents/ostp/PCAST/PCAST%20Sep.%202008%20Straubel%20slides.pdf>.

41           <sup>21</sup> See Brodd, *supra* note 15 (at 23).

offer an improved version of their present battery for incorporation into the device.

This coordination between device designer and battery manufacturer does not exist in the United States. Since new device designs constitute very sensitive business information, the device designer will not share detailed information on the battery needs with outside battery suppliers until the device is almost ready for production. Once new device designs are complete, OEMs specify battery requirements. They then use their specification to purchase from suppliers worldwide, based on price.

The relationship of U.S. battery manufacturers to device designers, including U.S. cellular phone, notebook computer, and other wireless manufacturers, is distant. The device designer imposes new product requirements. The device manufacturers develop relatively detailed battery performance specifications and buy against their specifications on price. They also want at least two suppliers of each component to have an assured supply to meet their needs. The battery manufacturers have relatively little advance warning when a new cell size is required for a new device. U.S. and European device manufacturers would buy a battery product from U.S. suppliers if it were available and the cost and performance were competitive.

All interviewees from U.S. battery manufacturers felt strongly that device designers place the battery last in their designs. The cavity provided for the battery is often an afterthought and undersized for the expected performance. It often does not fit particular battery sizes and shapes that are currently being manufactured.<sup>22</sup>

265. The ATP report continued as follows:

Since Japanese battery manufacturers are invariably part of large, vertically integrated electronics corporations, their device designers and battery developers readily share new product information. Early in the product development cycle, the battery group has inside information on the new requirements, sizes, and performance specifications. Conversely, the device designer is aware of attainable capabilities for battery performance. Each has time to respond to the evolving needs of the other.<sup>23</sup>

266. The ATP report continued as follows:

In markets for rechargeable batteries, customers are large, high-technology-based electronics companies, typically having Li-ion production within the same company. Developing a product requires close contact with portable electronic device designers.

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<sup>22</sup> *Id.* at 25-26.

<sup>23</sup> *Id.* at 29.

Huge investments have been made in Japan, Taiwan, South Korea, and Southeast Asia in a global effort to capture the market for rechargeable batteries for telecommunications, wireless, and computer products.<sup>24</sup>

267. The ATP report continued as follows:

Sony, Matsushita, and Sanyo all had significant R&D programs in the area, and each invested about \$150 million in production facilities in quick succession. Starting in 1991, they invested heavily in production capability; this investment continued throughout the decade and, in some cases, amounted to as much as \$1 to \$2 billion or more.<sup>25</sup>

## **2. The Demand For Lithium Ion Batteries Is Inelastic**

268. “Elasticity” is a term used to describe the sensitivity of supply and demand to changes in one or the other. For example, demand is said to be “elastic” if an increase in the price of a product results in diminished revenues, with declines in the quantity sold of that product outweighing the effects of higher prices on the value of sales. For products with a highly elastic demand, a price increase results in a large drop in the value of sales. In other words, customers have many feasible alternatives for cheaper products of similar quality, and so cut purchases sharply in the face of even a small price increase.

269. For a cartel to profit from raising prices above competitive levels, market demand must be relatively less elastic at competitive prices. That is, an increase in prices should not cause a huge decline in demand. Otherwise, increased prices would result in sharply declining sales, as some customers purchased substitute products or declined to buy altogether. A less elastic demand is a market characteristic that facilitates collusion, allowing producers to raise their prices without triggering customer substitution and sufficient lost sales revenues as to offset the beneficial effect of higher prices on profits for products they still continue to sell.

270. Demand for Lithium Ion Batteries is not very elastic because there are no close substitutes for these products.

## **3. The Market For Lithium Ion Batteries Is Highly Concentrated**

271. Market concentration facilitates collusion. If an industry is divided into a large number of small firms, the current gain from cheating on a cartel (profits from sales captured from

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<sup>24</sup> *Id.* at 47.

<sup>25</sup> *Id.* at 71.

1 other cartel members through undercutting of the cartel-fixed price in the current time period, which  
2 risks causing the cartel to fall apart in the future) is large relative to the firm's possible gains from  
3 the cartel's continuing future success (the firm's future share of the total cartel profits if collusion  
4 were to continue successfully). Conversely, with a more concentrated industry, a greater share for a  
5 colluding firm in future cartel profits tips the balance in favor of continued collusion, and away from  
6 any short-term, transitory bump in profits that could be achieved by undercutting the cartel price and  
7 gaining a transitory increase in market share.

8 272. Empirical scholarship on cartels has primarily focused on a concentration measure  
9 called the CR4 – the four-firm concentration ratio, the share of product sales accounted for by the  
10 four largest firms – as a diagnostic in analyzing what levels of concentration facilitate multi-firm  
11 collusion.<sup>26</sup>

12 273. A seminal published study of the DOJ's price-fixing investigations found that 76  
13 percent of these cartels occurred in sectors with CR4s of 50 percent or greater, which was about  
14 double the average CR4 for manufacturing. Fully a quarter of these cartels therefore were still  
15 organized in markets with a less than 50 percent share held by the four largest firms.<sup>27</sup>

16 274. Figure 14 below shows that the CR4 exceeded 60 percent in the market for Lithium  
17 Ion Batteries for all of the proposed class period, topping 80 percent in some years. The market share  
18 of the alleged cartel members never fell below 70 percent, and reached to almost 90 percent in some  
19 years.

20  
21  
22  
23 <sup>26</sup> The advantage of the CR<sub>4</sub> in predicting the relationship between concentration and the  
24 likelihood of collusion is that it does not vary with the degree of asymmetry in an industry (unlike  
25 the Herfindahl-Hirschman index (HHI), which as Motta notes, "confounds two factors – higher  
26 average market share and asymmetry"). Motta observes that if "the measure of concentration does  
not vary with asymmetry – as for the concentration ratios, C<sub>k</sub>, that sum the market shares of the k  
largest firms in the industry – then an increase in measured concentration should correspond to a  
higher likelihood of collusion." Massimo Motta, *Competition Policy, Theory and Practice* 143  
(Cambridge University Press 2004).

27 <sup>27</sup> See G.A. Hay & D. Kelley, *An Empirical Survey of Price-Fixing Conspiracies*, 17 *Journal of*  
28 *Law and Economics* (1974).

**Figure 14: Four-firm Concentration Ratios and Cartel Member Shares in the Lithium Ion Battery Industry**

Global Li-Ion Battery Market Share Percentages						
	2000 <sup>1</sup>	2005 <sup>1</sup>	2008 <sup>2</sup>	2008 <sup>3</sup>	2010 Q3 <sup>2</sup>	2011 <sup>3</sup>
Sanyo	33.0	28.0	22.0	23.0	20.0	
Panasonic	19.0	10.0	6.0	7.0	6.0	24.0
Samsung SDI	0.4	11.0	15.0	15.0	20.0	24.0
LG Chemical	1.3	6.5	7.0	7.0	14.0	16.0
Sony	21.0	13.0	15.0	14.0	11.0	8.0
BYD	2.9	7.5	8.0	9.0	5.0	5.0
BAK			7.0	6.0	6.0	4.0
TDK				4.0		4.0
Hitachi Maxell	3.4	3.3	5.0	4.0		3.0
Toshiba	11.0					
NEC TOKIN	6.4	3.6				
All Others	1.6	17.1	15.0	11.0	18.0	12.0
CR <sub>4</sub>	84.0%	62.0%	60.0%	61.0%	65.0%	72.0%
alleged cartel members	89.1%	71.8%	70.0%	70.0%	71.0%	75.0%

**Sources and Notes:**

<sup>1</sup>Market shares by value from METI (<http://www.meti.go.jp/english/information/downloadfiles/PressRelease/060828VehicleBatteries.pdf>).

<sup>2</sup>Market shares by value from January 26, 2011 Deutsche Bank Group report on LiB Materials Industry (citing METI and Nikkei Business Daily).

<sup>3</sup>Market shares by volume from July 20, 2012 Citi Research report on Lithium-ion Technology and Equities (citing TSR and Citi Research). Panasonic's 2011 market share contains Sanyo's (whom it merged with in 12/2009).

275. In a detailed July 20, 2012 investor report titled “*Lithium-ion batteries – A Japanese tech growth story?*” Citi Research, a division of Citigroup Global Markets, Inc., informed its investor clients that “The Big 3 of Panasonic, Samsung SDI, and LG Chem have a combined market share of over 60% and *the market is increasingly becoming an oligopoly.*” In a September 2011, 2008 article in the *Taipei Times*, Jackie Ding, the CFO of major Taiwanese packer Simplo Technology Co., one of Defendants’ primary customers, was quoted as stating “*All those cell players, what they do is control the market. . . . If it’s in oversupply status, then the oversupply will hurt them, while for us it will be an advantage.*”<sup>28</sup>

#### 4. Trade Associations, Industry Conferences and Other Common Forums Available to Facilitate Collusion

276. Defendants are members of numerous trade associations, and participate in numerous major industry trade shows, conferences, and seminars, providing Defendants with ample opportunities to further implement, facilitate, reinforce and monitor collusive activity under the guise of legitimate business undertakings, including travel and information exchanges.

<sup>28</sup> *Simplo Expects Cell Shortage to Last*, Taipei Times (Sep 11, 2008), <http://www.taipeitimes.com/News/biz/archives/2008/09/11/2003422889>.



1                                **a.        Battery Association of Japan**

2                277.    As noted herein, Japanese companies pioneered and initially dominated the world  
3 market for Lithium Ion Batteries, and they formed trade associations to facilitate their activities. GS  
4 Yuasa International Ltd., Hitachi Maxell, Ltd., NEC Energy Devices, Ltd., Panasonic Corporation,  
5 Sony Corporation and Toshiba Corporation are listed as “Regular Members” of the “Battery  
6 Association of Japan” (the “BAJ”).<sup>29</sup> The “Samsung Yokohama Research Institute” is listed as an  
7 “Associate Member.”<sup>30</sup> The BAJ was formed in 1997 with the merger of the Japan Dry Batteries  
8 Industries Association and the Japan Storage Battery Industries Association.<sup>31</sup> The BAJ states that  
9 the “Main Products of the Regular Member Companies” include Lithium Ion Batteries.<sup>32</sup>

10              278.    The BAJ lists its current Chairman as Mitsuru Homma<sup>33</sup>, an Executive Director &  
11 Executive Vice-President of Defendant Sanyo Electric Co., Ltd. and a member of the Board of  
12 Directors of Defendant Panasonic Corporation.<sup>34</sup>

13              279.    The BAJ has a myriad of committees and subcommittees, such as the “Secondary  
14 Battery Division,” the “Secondary Battery Division 2,” the “Standardization Committee,” the  
15 “International Battery Standardization Committee,” the “Material Procurement Committee,” the  
16 “Next Generation Storage Battery Committee,” the “Marketing Committee,” and the “Technology  
17 Committee.”<sup>35</sup>

18              280.    The BAJ lists its “Main Tasks” as including the “standardization activities of battery  
19 specifications,” which includes participating “in the TC21, the SC21A and the TC35 meetings as a  
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21              <sup>29</sup> *BAJ Organization*, Battery Association of Japan,  
22 <http://www.baj.or.jp/e/about/membership01.html> (last visited June 13, 2013).

23              <sup>30</sup> *Associate Members of Battery Association of Japan*, Battery Association of Japan  
24 <http://www.baj.or.jp/e/about/membership02.html> (last visited June 13, 2013).

25              <sup>31</sup> *History of Batteries and BAJ*, Battery Association of Japan  
26 <http://www.baj.or.jp/e/about/history.html> (last visited June 13, 2013).

27              <sup>32</sup> *Objective of the Battery Association of Japan (BAJ)*, Battery Association of Japan  
28 <http://www.baj.or.jp/e/about/overview.html> (last visited June 13, 2013).

29              <sup>33</sup> *Id.*

30              <sup>34</sup> *Members of the Board & Corporate Auditors*, Panasonic Corporation,  
31 <http://panasonic.net/sanyo/corporate/profile/management.html> (last visited June 13, 2013).

32              <sup>35</sup> *See BAJ Organization*, *supra* note 25.

1 member of the International Electrotechnical Commission (IEC), an international standards council,  
2 and works to promote IEC standards.” The BAJ further acts as “Secretary of the Commission,  
3 supervises the SC21A and TC35 meetings, and acts as the chair of the working group.”<sup>36</sup>

4 281. The BAJ lists another of its “Main Tasks” as conducting “Statistical surveys on the  
5 activities of battery industries” and that “surveys are conducted to track battery and appliance  
6 production and distribution as well as battery consumption, and the information is published in the  
7 BAJ newsletter and distributed to all types of publications and groups.”<sup>37</sup>

8 282. The BAJ lists another of its “Main Tasks” as the “promotion of interchange activities  
9 with relevant domestic and international organizations” and states that it “promotes the exchange of  
10 information between domestic related industries as well as with the European and American battery  
11 industries and the China battery association.”<sup>38</sup> The BAJ also lists, among it “Operations,” that it  
12 “engages in the following activities to achieve its objective: . . . Association and cooperation with  
13 external organizations involved with batteries and battery applied products.”<sup>39</sup>

14 283. The BAJ further lists a catchall “Main Task” category of “Others,” which includes “to  
15 actively promote all activities necessary for the development of the industry.”<sup>40</sup> The BAJ also states  
16 that its operations include “[a] range of additional [activities] required to achieve the Association’s  
17 objective other than those stated above.”<sup>41</sup>

18 **b. Korean Battery Trade Associations**

19 284. Korea IT Times reported in April 2012 that Japan’s Institute of Information  
20 Technology issued a report that “analyzed Samsung SDI’s success and how Korea overtook the  
21 secondary batteries market” and that “gave Samsung SDI and LG Chem high marks for placing  
22 Korea at the forefront of this industry by cooperating within the small rechargeable lithium-ion  
23

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24 <sup>36</sup> *Overview of the Main Tasks of the Battery Association of Japan (BAJ)*, Battery Association  
of Japan, <http://www.baj.or.jp/e/about/maintasks.html> (last visited June 13, 2013).

25 <sup>37</sup> *Id.*

26 <sup>38</sup> *Id.*

27 <sup>39</sup> *See Objective of the Battery Association of Japan (BAJ)*, *supra* note 28.

28 <sup>40</sup> *See Overview of the Main Tasks of the Battery Association of Japan (BAJ)*, *supra* note 32.

<sup>41</sup> *Id.*

batteries market.”<sup>42</sup>

285. In or about March 1997, the “Korea Battery Research Association” was formed, including Samsung and LG. An offshoot formed in 2011 and discussed below, the “Korea Battery Industry Association,” disseminated a slide presentation dated August 28th 2012, titled “Battery Technology Commercialization Strategies in Korea” for the “Germany-Korea Electric-auto Battery Technology Workshop.” The presentation analyzed the close ties formed as a result of the 1997 association formation, noting under heading titled “Factors that Made Korea’s Rechargeable battery Industry the Global Leader” that there was “Cooperative R&D between materials, batters and demand companies – link between development and commercialization” and that there was “Continuous growth by ensuring stable demand from Samsung Electronics and LG Electronics.” The presentation further notes that there was the “Formation of consortiums among research institutions, materials, batteries, and demand companies.” The presentation further notes there was “Reinforcement of cooperative systems between accessories, materials and battery companies for maximization of investment synergy” and there was the “Expansion of exchanges through technology exchanges [sic] seminars, promotion of custom cooperative R&D.”

286. The 2012 presentation continues, under a section titled “Stable Demand” that the Korea “Possesses global mobile IT device companies such as SEC [Samsung] and [LGE] as captive markets.”

287. In a report titled “*Next Generation Batteries: The Case of Korea*,” issued in approximately 2003, Invest Korea, an investment arm of the Korea Trade-Investment Promotion Agency, established in compliance with the Foreign Investment Promotion Act of 1998, stated that “For the secondary industry to grow on a continuing basis, the government plans to establish a Battery Industry Supporting Center, thereby forming a unified “window” for organic collaboration among the industry, universities and research organizations and initiating efforts to develop fundamental business such as technical evaluation and certification, development of parts, materials,

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<sup>42</sup> Kim Sung-Mi, *Korean Secondary Battery Leaping 10 years, Overtaking Japan*, Korean IT Times Global News Network (April 27, 2012), <http://www.koreaittimes.com/story/21199/korean-secondary-battery-leaping-10-years-overtaking-japan>.

1 and equipment industries, human resource development, international cooperation, and provision of  
2 information.” The report further noted the Korea Government’s “plan to implement various  
3 supportive measures for the industry, including the development of a medium-term industrial plan by  
4 2008, to advance and create sustainable conditions for the battery and related industries.”

5 288. The “Korea Battery Industry Association” (“KBIA”) was formed in November 2011,  
6 and Defendant Samsung SDI Co. Ltd. states the following regarding it:

7 Samsung SDI’s CEO, Park Sangjin, was elected as the first chairman  
8 of the Korea Battery Industry Association, which was newly launched  
9 in November 2011. The Association has a membership of over 50  
companies both large and small, including Samsung SDI, LG Chem,  
SK innovation, GS Caltex, and L&F Materials.

10 At its inaugural meeting held on November 1st 2011, a “Mutual  
11 Development Council” was installed, and the members agreed to  
12 pursue mutual development through “3 Main Strategies and 7 Joint  
Projects”, which can be summarized as: patent-related cooperation;  
eschewing vertical integration; and collaborative R&D.

13 As the chair company of the Korea Battery Industry Association,  
14 Samsung SDI will take a leadership role and, with the support of the  
15 government, mediate between large companies and SMEs, thus  
contributing to a healthy environment for mutual growth.<sup>43</sup>

16 289. The KBIA’s 2012 presentation, referenced above, continues that the “Main Projects in  
17 2012” include the “strengthening of global networks” and “Establishing MOUs with BAJ (Japan)  
18 and CIBA (China).”

### 19 c. Other Trade Associations

20 290. The “PRBA – Rechargeable Battery Association” (“PBRA”) was originally  
21 established in 1991 as the “Portable Rechargeable Battery Association” to develop battery recycling  
22 programs. Panasonic and Sanyo were among its founding members.<sup>44</sup> Officer of Panasonic, Sanyo  
23 and Sony sit on the organization’s board of directors<sup>45</sup>, and it counts Maxell, Panasonic Battery, and

24  
25 <sup>43</sup> *Official Institutes & Public Associations: Public Policy Response and Participation*,  
Samsung SDI, [http://www.samsungsdi.com/sustain/s2\\_7.jsp](http://www.samsungsdi.com/sustain/s2_7.jsp) (last visited June 14, 2013).

26 <sup>44</sup> *About PRBA*, Portable Rechargeable Battery Association, <http://www.prba.org/about-prba/>  
27 (last visited June 30, 2013).

28 <sup>45</sup> *Board of Directors at PRBA*, Portable Rechargeable Battery Association,  
<http://www.prba.org/about-prba/>board-of-directors/> (last visited June 14, 2013).

1 Samsung SDI among its members.<sup>46</sup> It now acts as the “voice of the Rechargeable Power Industry,  
2 representing its members on legislative, regulatory and standards issues at the state, federal and  
3 international level.”<sup>47</sup> It states that it “provides reports, newsletters and other information to keep its  
4 members informed of the latest activities and issues affecting the rechargeable power industries.”<sup>48</sup>  
5 The PRBA further states that it “has a long-standing and successful working relationship with the  
6 Battery Association of Japan (BAJ)” and that it “works closely with its counterparts in Europe and  
7 coordinates its efforts with several European battery trade associations including, RECHARGE,  
8 Eurobat, European Portable Battery Association and European Battery Recycling Association.”<sup>49</sup>

9 291. “Battery Power” is an annual conference in existence for more than a decade, to be  
10 held in Colorado this year, and it bills itself as “an international conference highlighting the latest  
11 developments and technologies in the battery industry.”<sup>50</sup> The conference “is designed for OEM  
12 design engineers and system engineers involved in battery powered products and systems and power  
13 management technology, as well as battery pack and cell manufacturers.”<sup>51</sup> This year’s attendees are  
14 listed as including Samsung and Panasonic.

15 292. “Battery Japan” bills itself as the “world’s largest trade show for rechargeable  
16 batteries,” and is a concurrent exhibition and technical conferences. Representatives of Sanyo, Sony  
17 and Panasonic all participated as Committee Members for the 2011 Conference, and Samsung was  
18 listed as among the 2013 exhibitors.

#### 19 E. Government Investigations into a Lithium Ion Batteries Cartel

20 293. A globally coordinated antitrust investigation is taking place in at least the United  
21 States and Europe, aimed at manufacturers of Lithium Ion Batteries. In the United States, as detailed

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22 <sup>46</sup> *Membership*, Portable Rechargeable Battery Association  
23 <http://www.prba.org/membership/membership-directory/> (last visited June 14, 2013).

24 <sup>47</sup> *Powering the Future*, Portable Rechargeable Battery Association, <http://www.prba.org/> (last  
visited June 14, 2013).

25 <sup>48</sup> *See About PRBA*, *supra* note 40.

26 <sup>49</sup> *Benefits of Membership of PRBA*, Portable Rechargeable Battery Association  
<http://www.prba.org/membership/benefits-of-membership> (last visited June 14, 2013).

27 <sup>50</sup> Battery Power 2013, <http://www.batterypoweronline.com/conferences/> (last visited June 14,  
2013).

28 <sup>51</sup> *Id.*

1 below, two Defendants – Sanyo Electric Co., Ltd. and LG Chem, Ltd. – have now pled guilty to the  
2 criminal price-fixing of Lithium Ion Batteries.

3 294. In or around June 2011, defendant Sony Corporation disclosed that its wholly owned  
4 U.S. subsidiary – Sony Electronics, Inc. – received a subpoena from the DOJ concerning its  
5 “secondary batteries” business. Specifically, Sony disclosed that:

6 In May 2011, Sony Corporation’s U.S. subsidiary, Sony Electronics  
7 Inc., received a subpoena from the U.S. Department of Justice (“DOJ”) Antitrust Division seeking information about its secondary batteries  
8 business.

9 Sony understands that the DOJ is investigating competition in the  
10 secondary batteries market. Based on the stage of the proceeding, it  
11 is not possible to estimate the amount of loss or range of possible  
loss, if any, that might result from adverse judgments, settlements or  
other resolution of this matter.<sup>52</sup>

12 295. On or about June 27, 2012, Sony issued its SEC Form 20-F for its fiscal year ended  
13 March 31, 2012, disclosing an apparent expansion of the investigation and stating that “DOJ and  
14 agencies outside the United States are investigating competition in the secondary batteries market.”

15 296. Around the same time as its initial disclosure of the governmental investigation,  
16 according to a Korean news article, a source from the DOJ confirmed that it was conducting a  
17 criminal investigation into potential price fixing with respect to the sale of secondary batteries in the  
18 United States and has been since the first half of 2011. The same article quoted the source as stating  
19 that criminal charges are likely to be filed.

20 297. On or about August 20, 2012, LG Chem confirmed that it also was the target of the  
21 investigation being conducted by the DOJ. As detailed below, LG Chem subsequently pled guilty.

22 298. Other news articles have confirmed that in addition to defendants Sony and LG Chem,  
23 Samsung SDI and Panasonic are also under investigation by the DOJ for price fixing with respect to  
24 the sale of rechargeable batteries.

25 299. On April 17, 2013, defense counsel for Hitachi in the present case wrote to counsel  
26 for plaintiffs and confirmed that MCA [Maxell Corporation of America] received a subpoena on  
27

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28 <sup>52</sup> Sony Corporation SEC Form 20-F for fiscal year ending March 31, 2011, filed June 28, 2011.

1 April 29, 2011 from the Antitrust Division of the DOJ. Hitachi's letter also referenced "two state  
2 Attorneys General investigating the LIB [lithium ion battery] business" and further referenced  
3 Hitachi's receipt of "Civil Investigative Demands issued by [the Attorneys General] offices."

4 300. On November 7, 2012, Defendants confirmed in writing to the Judicial Panel on  
5 Multidistrict Litigation that they "are informed and believe that a grand jury of the Northern District  
6 of California is conducting an antitrust investigation into the pricing of lithium ion batteries, and the  
7 San Francisco field office of the Antitrust Division of the DOJ is leading that effort."<sup>53</sup>

8 **1. The Criminal Guilty Pleas of Sanyo Electric Co., Ltd. and LG Chem, Ltd.**

9 **a. Sanyo Electric Co. Ltd.'s Criminal Guilty Plea**

10 301. On September 3, 2013, the DOJ filed with this Court a criminal "Plea Agreement"  
11 entered into and signed by Defendant Sanyo Electric Co., Ltd. This Plea Agreement included the  
12 following:

- 13 ■ [D]efendant will waive indictment and plead guilty to a one-count Information to be  
14 filed in the United States District Court for the Northern District of California. The  
15 Information will charge the defendant with participating in conspiracy to suppress and  
16 eliminate competition by fixing the prices of cylindrical lithium ion battery cells sold  
17 in the United States and elsewhere for use in notebook battery packs from about April  
18 2007 to about September 2008, in violation of the Sherman Antitrust Act, 15 U.S.C. §  
19 1.
- 20 ■ The defendant will plead guilty to the criminal charge described in Paragraph 2 above  
21 pursuant to the terms of this Plea Agreement and will make a factual admission of  
22 guilt to the Court . . ."
- 23 ■ Had this case gone to trial, the United States would have presented evidence sufficient  
24 to prove the following facts . . . During the relevant period, [Matsushita Electric  
25 Industrial Co., Ltd.] and Sanyo Electric . . . participated in a conspiracy with other  
26 persons and entities engaged in the manufacture and sale of cylindrical lithium ion  
27 battery cells, the primary purpose of which was to fix the prices of cylindrical lithium  
28 ion battery cells sold in the United States and elsewhere for notebook computer  
battery packs."

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25 <sup>53</sup> *In re: Lithium Ion Batteries Antitrust Litigation*, Responses of Certain Defendants to Motion  
26 of Plaintiff Woodrow Clark II for the Transfer of Related Actions to the District of New Jersey for  
27 Coordinated or Consolidated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407, at 7 MDL No. 2420  
28 (J.P.M.L. 2012), ECF No. 33, Nov. 7, 2012 (filed by Samsung SDI America, Inc., LG Chem  
America, Inc., Sony Electronics Inc., Panasonic Corporation of North America, Sanyo North  
American Corporation, Samsung Electronics America, Inc., and Maxell Corporation of America).

- 1           ▪       Acts in furtherance of this conspiracy were carried out within the Northern District of  
2           California. Cylindrical lithium ion battery cells used in notebook computer battery  
3           packs and battery packs containing the price-fixed cells that were the subjects of this  
4           conspiracy were sold by one or more of the conspirators to customers in this District.”
- 5           ▪       The defendant and the defendant’s parent, Panasonic, and the subsidiaries of the  
6           defendant and Panasonic (collectively, “related entities”) will cooperate fully and  
7           truthfully with the United States in the prosecution of this case, the current federal  
8           investigation of violations of federal antitrust and related criminal laws involving the  
9           manufacture or sale of cylindrical lithium ion battery cells . . . For purposes of this  
10          Plea Agreement, subsidiaries are entities in which the defendant or Panasonic, directly  
11          or indirectly, had a greater than 50% ownership interest as of the date of signature of  
12          this Plea Agreement.
- 13          ▪       [T]he United States agrees that it will not bring further criminal charges against the  
14          defendant or any of its related entities for any act or offense committed before the  
15          date of this Plea Agreement that was undertaken in furtherance of an antitrust  
16          conspiracy involving the manufacture or sale of cylindrical lithium ion battery cells.

17           302.   The one-count criminal Information referenced above states the following among  
18          other things:

- 19                   For the purpose of forming and carrying out the charged combination and conspiracy,  
20                   the defendant and its co-conspirators did those things that they combined and  
21                   conspired to do, including, among other things:
- 22           (a)   participating in meetings, conversations, and communications in Korea, Japan, and  
23           elsewhere to discuss the prices of cylindrical lithium ion battery cells for use in  
24           notebook computer battery packs;
  - 25           (b)   agreeing, during those meetings, conversations, and communications, to charge prices  
26           of cylindrical lithium ion battery cells for use in notebook computer battery packs at  
27           certain predetermined levels;
  - 28           (c)   issuing price quotations in accordance with the agreements reached;
  - (d)   collecting and exchanging information on prices and sales of cylindrical lithium ion  
          battery cells for the purpose of monitoring and enforcing adherence to the agreed-  
          upon prices;
  - (e)   authorizing, ordering, and consenting to the participation of subordinate employees in  
          the conspiracy; and
  - (f)   taking steps to conceal the conspiracy and conspiratorial contacts, conversations, and  
          communications through various means.



1           303. On October 01, 2013, this Court entered a “Judgment in a Criminal Case,” stating that  
2 Sanyo Electric Co. Ltd. “pleaded guilty to count One of the Information” and that it “is adjudicated  
3 guilty of these offenses: 15 U.S.C. section 1 Price Fixing”

4                   **b. LG Chem Ltd.’s Guilty Plea Agreement**

5           304. On September 3, 2013, the DOJ filed with this Court a criminal “Plea Agreement”  
6 entered into and signed by Defendant LG Chem, Ltd. This Plea Agreement included the following:

- 7           ▪ [D]efendant will waive indictment and plead guilty to a one-count Information to be  
8 filed in the United States District Court for the Northern District of California. The  
9 Information will charge the defendant with participating in conspiracy to suppress and  
10 eliminate competition by fixing the prices of cylindrical lithium ion battery cells sold  
11 in the United States and elsewhere for use in notebook battery packs from about April  
12 2007 to about September 2008, in violation of the Sherman Antitrust Act, 15 U.S.C. §  
13 1.
- 14           ▪ The defendant will plead guilty to the criminal charge described in Paragraph 2 above  
15 pursuant to the terms of this Plea Agreement and will make a factual admission of  
16 guilt to the Court . . .”
- 17           ▪ Had this case gone to trial, the United States would have presented evidence sufficient  
18 to prove the following facts . . . During the relevant period, [LG Chem Ltd.]. . .  
19 participated in a conspiracy with other persons and entities engaged in the  
20 manufacture and sale of cylindrical lithium ion battery cells, the primary purpose of  
21 which was to fix the prices of cylindrical lithium ion battery cells sold in the United  
22 States and elsewhere for notebook computer battery packs.”
- 23           ▪ Acts in furtherance of this conspiracy were carried out within the Northern District of  
24 California. Cylindrical lithium ion battery cells used in notebook computer battery  
25 packs and battery packs containing the price-fixed cells that were the subjects of this  
26 conspiracy were sold by one or more of the conspirators to customers in this District.”
- 27           ▪ The defendant and its subsidiaries will cooperate fully and truthfully with the United  
28 States in the prosecution of this case, the current federal investigation of violations of  
federal antitrust and related criminal laws involving the manufacture or sale of  
cylindrical lithium ion battery cells . . . The defendant’s subsidiaries for purposes of  
this Plea Agreement are entities in which the defendant had a greater than 50%  
ownership interest as of the date of signature of this Plea Agreement.
- [T]he United States agrees that it will not bring further criminal charges against the  
defendant or any of its subsidiaries for any act or offense committed before the date of  
this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy  
involving the manufacture or sale of cylindrical lithium ion battery cells.

1           305.    The one-count criminal Information referenced above states the following among  
2 other things:

3                   For the purpose of forming and carrying out the charged combination and conspiracy,  
4 the defendant and its co-conspirators did those things that they combined and  
5 conspired to do, including, among other things:

- 6           (a)    participating in meetings, conversations, and communications in Korea, Japan, and  
7 elsewhere to discuss the prices of cylindrical lithium ion battery cells for use in  
8 notebook computer battery packs;  
9           (b)    agreeing, during those meetings, conversations, and communications, to charge prices  
10 of cylindrical lithium ion battery cells for use in notebook computer battery packs at  
11 certain predetermined levels;  
12           (c)    issuing price quotations in accordance with the agreements reached;  
13           (d)    collecting and exchanging information on prices and sales of cylindrical lithium ion  
14 battery cells for the purpose of monitoring and enforcing adherence to the agreed-  
15 upon prices;  
16           (e)    authorizing, ordering, and consenting to the participation of subordinate employees in  
17 the conspiracy; and  
18           (f)    taking steps to conceal the conspiracy and conspiratorial contacts, conversations, and  
19 communications through various means.

20           306.    On October 10, 2013, this Court conducted a hearing regarding LG Chem Ltd.'s  
21 guilty plea, and asked LG Chem Ltd. through its corporate representative Heung Ryu Yoon, General  
22 Counsel and Vice President, the following questions and received the following answers:

23                   **THE COURT:** And it is true that high-level personnel of LG Chem  
24 did participate in a conspiracy that he identified?

25                   **THE DEFENDANT:** (Through the interpreter) Yes.

26                   (Pause in the proceedings.)

27                   **THE COURT:** Approximately how many discussions or meetings  
28 occurred? (Translation by the interpreter.)

**THE COURT:** Just an approximation.

**THE DEFENDANT:** (Through the interpreter) About 20 or 30.

**THE COURT:** And can you describe generally what is meant by  
"high-level personnel"?

1                   **THE DEFENDANT:** (Through the interpreter) I'm referring to the  
2                   officers within the Battery Division.

3                   307.    On October 15, 2013, this Court entered a "Judgment in a Criminal Case," stating that  
4                   LG Chem Ltd. "pleaded guilty to count 1 of the Information" and that it "is adjudicated guilty of  
5                   these offenses: 15 U.S.C. section 1 Price Fixing"

6                   **F.       Defendants Have a History of Conspiring to Fix Prices for Critical Components of**  
7                   **Consumer Electronics**

8                   308.    Many of the Defendants have a long history of criminal collusion and are either  
9                   currently involved in worldwide investigations into other technology-related products or have been  
10                  convicted of participating in price fixing cartels involving technology-related products. Further,  
11                  much of the illegal conduct to which the Defendants or their affiliates have admitted to, took place  
12                  during the Class Period identified in this complaint.

13                309.    Notably, the Lithium Investing News, which identifies itself as a "source for  
14                unbiased, independent news and information on the lithium market," evaluated the allegations in the  
15                initial complaint in this matter, wrote that the "*allegations aren't far fetched*" and noted that  
16                "[e]lectronics companies have been the subject of several price-fixing investigations conducted by  
17                the United States and the European Union in recent years." (emphasis added).<sup>54</sup>

18                310.    A notebook computer contains four key pieces of hardware: a dynamic random access  
19                memory (DRAM) chip, a liquid crystal display (LCD) screen, an optical disk drive (ODD), and a  
20                rechargeable lithium-ion battery. Defendants here have pled guilty to fixing the prices of the first  
21                three of these components, and the DOJ is investigating whether to bring criminal price-fixing  
22                charges for the fourth component - Lithium Ion Batteries.

23                311.    In a detailed July 20, 2012 investor report titled "*Lithium-ion batteries – A Japanese*  
24                *tech growth story?*" Citi Research, a division of Citigroup Global Markets, Inc., wrote to investor  
25                clients that "We think that behind the advance of South Korean firms lie many of the same  
26                ingredients that led to their success in semiconductor memory and LCD panels."

27                <sup>54</sup> Melissa Pistilli, *Lithium Battery Manufacturers Accused of Price Fixing*, Lithium Investing  
28                News (Nov. 12, 2012), <http://lithiuminvestingnews.com/6599/lithium-ion-battery-manufacturers-accused-price-fixing-electric-vehicles-lawsuit/>.

1           312. That success in fact came about by illegal means, as in the present case. For example,  
2 In or around October 2005, Samsung Electronics Company, Ltd. and Samsung Semiconductor, Inc.  
3 agreed to plead guilty and pay a \$300 million fine for “participating in an international conspiracy to  
4 fix prices in the [Dynamic Random Access Memory] market . . . .” Samsung Electronics Company,  
5 Ltd. and Samsung Semiconductor, Inc. admitted that they participated in the conspiracy from  
6 approximately April 1, 1999 through June 15, 2002. In addition, seven Samsung executives (Il Ung  
7 Kim, Sun Woo Lee, Yeongho Kang, Young Woo Lee, Thomas Quinn, Young Hwan Park, Young  
8 Bae Rha) agreed to plead guilty to participating in the conspiracy with respect to DRAM. Each  
9 agreed to pay a \$250,000 criminal fine and serve a prison sentence in the United States ranging from  
10 seven to fourteen months.

11           313. Although it has not been publicly acknowledged, it is widely believed that Samsung is  
12 in the DOJ leniency program with respect to the DOJ’s investigation into the market for LCDs,  
13 meaning that it has admitted its participation in the cartel.

14           314. In November 2008, LG Display Co., Ltd., a wholly owned Korean subsidiary of LG  
15 Electronics, agreed to plead guilty and pay a \$400 million fine to the United States, in connection  
16 with its participation in a worldwide conspiracy to fix the prices of LCDs during the period from  
17 September 2001 through June 2006. At the time, the fine paid by LG was the second highest fine  
18 ever imposed by the Antitrust Division of the DOJ. In addition, in April 2009, an executive of LG  
19 Display, Bock Kwon, agreed to plead guilty to participating in the global LCD conspiracy from  
20 September 2001 through June 2006. Kwon, a Korean national, agreed to serve 12 months in a U.S.  
21 prison and pay a \$30,000 criminal fine. Further, in February 2009, another LG Display executive,  
22 Duk Mo Koo, agreed to plead guilty to participating in the global conspiracy with respect to LCDs  
23 from September 2001 through December 2006.

24           315. In March 2009, Hitachi Displays, Ltd., a wholly owned Japanese subsidiary of  
25 Hitachi, Ltd., agreed to plead guilty and pay a \$31 million fine for participating in a worldwide  
26 conspiracy to fix the prices of LCDs during the period April 1, 2011 through March 31, 2004.

27           316. In September 2011, an entity which is a joint venture between Hitachi, Ltd. and LG  
28 Electronics, Inc. - Hitachi-LG Data Storage, Inc. - agreed to plead guilty and pay a \$21.1 million fine

1 for participating in various conspiracies to rig bids and fix prices for ODDs during the period from  
2 June 2004 through September 2009. In addition, three Hitachi-LG Data Storage executives also  
3 agreed to plead guilty for participating in the same conspiracy. In December 2011, Yong Kuen Park,  
4 Sang Hun Kim, and Sik Hur agreed to plead guilty for participating in the conspiracy with respect to  
5 ODDs during the period November 2005 through September 2009. All three agreed to serve prison  
6 time in the United States and pay criminal fines.

7 317. Defendants have also entered guilty pleas for fixing prices for other high-tech  
8 products.

9 318. In or around March 2011, Defendant Samsung SDI, Company, Ltd. agreed to plead  
10 guilty and pay a \$32 million fine for participating in a “global conspiracy to fix prices, reduce output,  
11 and allocate market share of color display tubes, a type of cathode ray tube used in computer  
12 monitors and other specialized applications . . . .” Samsung SDI Company Ltd. admitted it  
13 participated in the conspiracy from approximately January 1997 through at least March 2006.

14 319. In September 2010, Defendant Panasonic Corporation agreed to plead guilty and pay  
15 a \$49.1 million fine for participating in a conspiracy to “suppress and eliminate competition by  
16 fixing prices to customers of household compressors . . . .” during the period October 14, 2004  
17 through December 31, 2007.

18 320. Certain defendants in the present litigation are also defendants in other civil  
19 consolidated antitrust litigations pending in this district and related to the above criminal matters.  
20 Plaintiffs in these actions allege that defendants, as in the present action, colluded to illegally fix the  
21 prices of certain products including computer components. For example, Defendants in two of the  
22 actions have produced documents relevant to the present case and that evidence Defendants’  
23 collusive conduct with respect to Lithium Ion Batteries. These actions are captioned: (1) In re Optical  
24 Disk Drive Products Antitrust Litig., Case No. 3:10-md-2143 RS (“ODD Litigation”), and (2) In re  
25 Cathode Ray Tube (CRT) Antitrust Litig., Case No. C 07-5944 SC, MDL No. I917 (“CRT  
26 Litigation”).

27 321. The following is a chart detailing the overlapping and related defendants among the  
28 present case, the ODD Litigation, and the CRT Litigation:

<b>PRESENT CASE RE: LITHIUM ION BATTERIES</b>	<b>ODD ANTITRUST LITIGATION</b>	<b>CRT ANTITRUST LITIGATION</b>
LG Chem, Ltd. LG Chem America, Inc.	LG Electronics, Inc. Hitachi-LG Data Storage, Inc. Hitachi-LG Data Storage Korea, Inc.	LG Electronics, Inc. LG Electronics Taiwan Taipei Co., Ltd. LG Electronics USA, Inc.
Panasonic Corporation Panasonic Corporation of North America	Panasonic Corporation Panasonic Corporation of North America	Panasonic Corporation Panasonic Corporation of North America
Sony Corporation Sony Energy Devices Corporation Sony Electronics, Inc.	Sony Corporation	--
Samsung SDI Co., Ltd. Samsung SDI America, Inc.	Samsung Electronics Co., Ltd.	Samsung SDI Co., Ltd. Samsung SDI America, Inc.
Hitachi, Ltd. Hitachi Maxell, Ltd.	Hitachi, Ltd.	Hitachi, Ltd.

#### **IV. THE ROLE OF THE PACKER COMPANIES IN THE INDUSTRY.**

322. Three Taiwanese companies, known as “packers,” acquire battery cells from Defendants, assemble them into battery “packs” and then supply the packs to manufacturers of laptop computers, cell phones, and the other consumer electronics devices discussed herein.

##### **A. Simplo Technology Co., Ltd.**

323. Simplo is a publicly-traded company based in Taiwan. In 2010, a news report stated that “Simplo is the world’s large notebook PC battery pack maker now. Last year, some 160 million notebook PCs were sold worldwide, with one out of every five adopting the firm’s battery packs on average ... the firm scored banner sales revenue of US \$1.07 billion.”<sup>55</sup> Another 2010 news report stated that “Simplo has commanded a 22-23% share of the global market for notebook PC battery

<sup>55</sup> *Simplo to Keep Dominating Global Battery Modules This Year*, Cens.com, [http://cens.com/cens/html/en/news/news\\_inner\\_31685.html](http://cens.com/cens/html/en/news/news_inner_31685.html) (last visited June 13, 2013).

1 packs, only next to Sanyo's 24%. However, institutional investors indicated that Simplo, with orders  
2 from new customers serving as a growth drive [sic], is very likely to boost its market share to over  
3 30% to outpace the Japanese competitor in 2011."<sup>56</sup>

4 324. Simplo's website indicates that it was founded in April of 1992 and that at the time its  
5 "Main operating items were Ni-mh Battery Pack and Li-ion Pack for Notebooks."<sup>57</sup> Simplo further  
6 states that in October 2003 it was "Certified by DELL."<sup>58</sup> It references its products as including the  
7 following: "Battery Pack of Notebook," "Battery Pack of Tablet PC," "Battery Pack of Cell  
8 Phone/Smart Phone," "Battery Pack of GPS," "Battery Pack of Cable Modem," "Battery Pack of E-  
9 Bike/ E-Scooter/ Power Wheelchair," "Other specialized battery pack," and "Trade of battery  
10 pack."<sup>59</sup> Simplo further lists its "Customers" as including Apple, Dell, HP, Acer, Compal, FIC,  
11 Inventec, Quanta, Uniwill, Arima, MSI, Clevo, LGE, Twinhead, and Wistron.<sup>60</sup> A March 2012  
12 article in the Taipei Times stated that "Simplo supplies battery packs to 30 clients in laptop and  
13 tablet-related areas, covering all the major firms, except for Samsung Electronics Co., [Simplo  
14 Chairman and CEO Raymond] Sung said."<sup>61</sup>

15 325. Simplo's chairman and CEO F.H. Sung was quoted in December 2009 as stating that  
16 Simplo had "delivered hundreds of millions of battery packs for different industrial applications."<sup>62</sup>  
17 Reports from earlier in the Class Period further reinforce the massive volume of relevant commerce  
18 flowing through Simplo. In April 2005, a news report stated that "Simplo and DynaPack, Taiwan's  
19 two leading manufacturers of notebook computer battery modules, see their combined share of the  
20

21 <sup>56</sup> *Simplo Aims to Unseat Sanyo as World's Largest Battery Pack Supplier in 2011*, Cens.com,  
22 [http://cens.com/cens/html/en/news/news\\_inner\\_34553.html](http://cens.com/cens/html/en/news/news_inner_34553.html) (last visited June 13, 2013).

23 <sup>57</sup> *Company Profile*, Simplo Technology Co., Ltd., <http://www.simplo.com.tw/company.htm>  
24 (last visited June 13, 2013).

25 <sup>58</sup> *Id.*

26 <sup>59</sup> *Id.*

27 <sup>60</sup> *Id.*

28 <sup>61</sup> Lisa Wang, *Simplo Posts Its Strongest Profits in Six Quarters*, Taipei Times (March 10,  
2012), <http://www.taipeitimes.com/News/biz/archives/2012/03/10/2003527393>.

<sup>62</sup> *Simplo Technology CEO Self-promotes with Analysis of Li-ion Cell Biz*, Articlesbase  
(Dec. 30, 2009), [http://www.articlesbase.com/electronics-articles/simplo-technology-ceo-  
selfpromotes-with-analysis-of-liion-cell-biz-1642348.html](http://www.articlesbase.com/electronics-articles/simplo-technology-ceo-selfpromotes-with-analysis-of-liion-cell-biz-1642348.html).

1 global market run close to 30%. Simplo is very likely to unseat Sanyo of Japan as the world's largest  
2 producer in the line this year.”<sup>63</sup> The 2005 report continued that “Simplo said it would see shipments  
3 reach 11 million battery modules for a 20% global market share this year, compared with last year's  
4 17%” and that “Simplo president Sung Fu-hsiang said his company shipped 7.5 million lithium  
5 battery modules for a 17% global market share last year, only behind Sanyo of Japan.”<sup>64</sup>

6 326. In December 2003, a news report regarding Simplo stated that “[t]he company  
7 estimated it would ship 2.4 million NB batteries to Hewlett Packard this year, accounting for 44% of  
8 its total shipments of 5.25 million units. The company anticipated it would see shipment grow to 8.6  
9 million NB batteries next year” and that “[w]ith the orders from Dell and Hewlett Packard, Simplo  
10 vows to become the world's second largest manufacturer of NB batteries next year, with its global  
11 market share to expand to between 18% and 20% from the existing 13.8%.”<sup>65</sup>

12 **B. Celxpert**

13 327. Celxpert states on its website that “Since its founding in 1997, [it] has experienced  
14 incredible growth” and that “its customers base [sic] on the rapidly evolving notebook computer,  
15 cellular phone and handheld device markets. . . .”<sup>66</sup> and that it is “a dedicated developer and  
16 manufacturer of battery packs for portable and handheld devices.”<sup>67</sup> Celxpert's website further states  
17 that in January of 1999, it “[b]egan technical Notebook Battery Pack Development with NEC  
18 (Japan)” and that in 2010 it “[e]nter[ed] Tablet PC market,” that in 2011 it “[e]nter[ed] Ultrabook  
19 market,” and that in 2012 it “[e]nter Power Tool, ESS market.”<sup>68</sup>

20 328. Celxpert's website states that its “Competence & Strength” includes “[s]igning  
21 cooperate contract with major cell vendors. Keep the supply steady. Signing supply contract with our

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22 <sup>63</sup> *Taiwan's Notebook Battery Makers Enjoying Rising Global Market Shares*, Cens.com  
23 (April 11, 2005), [http://cens.com/cens/html/en/news/news\\_inner\\_10191.html](http://cens.com/cens/html/en/news/news_inner_10191.html).

24 <sup>64</sup> *Id.*

25 <sup>65</sup> *Simplo Obtains Dell Orders for NB Battery*, Cens.com (Dec. 22, 2003),  
26 [http://cens.com/cens/html/en/news/news\\_inner\\_11540.html](http://cens.com/cens/html/en/news/news_inner_11540.html).

27 <sup>66</sup> *About Us/ Management for Growth*, Celxpert Energy Corporation,  
28 <http://www.celxpert.com.tw/eng/p1-1.asp> (last visited June 13, 2013).

<sup>67</sup> *About Us/ Company History*, Celxpert Energy Corporation,  
<http://www.celxpert.com.tw/eng/p1-2.asp> (last visited June 13, 2013).

<sup>68</sup> *Id.*



1 chiefly NB [notebook] and Cellular phone customers and signed long term contract with major cell  
2 vendors to assure the supply.”<sup>69</sup> It further notes its competence and strength as including  
3 “[s]tandardization of manufactory [sic] procedure and production.”<sup>70</sup> Celxpert’s website lists its  
4 “Vendors” as including Panasonic, Samsung SDI, Maxell, NEC / Tokin, Sony and LG Chem.<sup>71</sup>  
5 Celxpert’s website lists its “Customer[s]” as including Asus, Blackberry, Lenovo, Hitachi, Pegatron,  
6 Unihan, Samsung, LG, Quanta, Compal, and Clevo.<sup>72</sup>

7 329. On its website, Celxpert presently makes available what appears to be a translated  
8 news article dated December 29, 2003, that quotes Celxpert’s President as stating “Now the lithium  
9 cells, direct material of battery packs mainly in flowed by Japan and Korea suppliers. Due to mutual  
10 understanding between these parties, we have got the firmly committed support based on long-term  
11 cooperation.”<sup>73</sup>

#### 12 C. Dynapack

13 330. Dynapack states on its website that it was founded in 1998 and at that time it’s  
14 “[m]ain operating items include Ni-MH BatteryPack, Li-ION BatteryPack for Notebook and  
15 CellPhone.”<sup>74</sup> It further states that in March 2001 “BatteryPack for Notebook accumulated  
16 production volume has been broken through one million sets” and that in March 2002 “BatteryPack  
17 for Notebook accumulated production volume has been broken through two million sets.”<sup>75</sup>  
18 Dynapack provides on its website information appearing to indicate the identity of at least some of  
19 its customers and/or suppliers. For the time period “2001-2008” it states it “Passed Apple  
20 Qualification,” “Passed HP Qualification,” “Passed Dell Qualification,” “Passed MPE

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21 <sup>69</sup> *About Us/ Competence and Strength*, Celxpert Energy Corporation,  
22 <http://www.celxpert.com.tw/eng/p1-3.asp> (last visited June 13, 2013).

23 <sup>70</sup> *Id.*

24 <sup>71</sup> *Customer*, Celxpert Energy Corporation, <http://www.celxpert.com.tw/eng/p5-1.asp> (last  
visited June 13, 2013).

25 <sup>72</sup> *Id.*

26 <sup>73</sup> *New Release*, Celxpert Energy Corporation, [http://www.celxpert.com.tw/eng/news-  
1a.asp?num=36](http://www.celxpert.com.tw/eng/news-1a.asp?num=36) (last visited June 13, 2013).

27 <sup>74</sup> *About DynaPack/ Milestone*, DynaPack, <http://www.dynapack.com.tw/englisg/> (last visited  
June 13, 2013).

28 <sup>75</sup> *Id.*

1 Qualification,” “Passed SONY Green Partners management system Audit,” “Passed ASUS, LG,  
2 HTC Qualification,” “Passed ODM, OEM Customers Qualification eg: Quanta, Compal,  
3 Inventec ...” (ellipsis in original).<sup>76</sup> For 2009, Dynapack makes similar representations about  
4 qualification and audits for some of the same companies, as well as “Passed Wistron Annual Audit,”  
5 “Passed SEC Qualification Audit” [presumably Samsung].” For 2010, Dynapack again made similar  
6 representations, as well as “Passed Pegatron Qualification Audit,” and “Passed Delta Qualification  
7 Audit.” Similar representations were made for 2011.

8 331. A February 2010 news report indicated that Dynapack “is expected to ship over 6  
9 million battery packs to Apple for the entire year.”<sup>77</sup> An April 2005 news report stated that  
10 “Dynapack will aim to ship 4.53 million battery modules to raise market share to 8.24% this year  
11 from last year’s 5.8%.”<sup>78</sup>

## 12 V. MANNER AND MEANS OF THE CONSPIRACY

13 332. For purposes of forming and carrying out the charged combination and conspiracy,  
14 Defendants did those things that they combined and conspired to do, including, among other things:

- 15 a. participating in meetings, conversations and communications in the United  
16 States, Japan, Korea and elsewhere to discuss the prices of Lithium Ion Batteries in the United States  
17 and elsewhere;
- 18 b. agreeing, during those meetings, conversations and communications, on prices  
19 for Lithium Ion Batteries sold in the United States and elsewhere;
- 20 c. agreeing, during those meetings, conversations and communications, to  
21 depress the supply of Lithium Ion Batteries;
- 22 d. agreeing, during those meetings, conversations and communications, to  
23 coordinate prices for Lithium Ion Batteries sold in the United States and elsewhere;

24  
25 <sup>76</sup> *Id.*

26 <sup>77</sup> *Simplo, Dynapack to See Auspicious Year in 2010*, Cens.com (Feb. 3, 2010),  
27 [http://cens.com/cens/html/en/news/news\\_inner\\_31131.html](http://cens.com/cens/html/en/news/news_inner_31131.html).

28 <sup>78</sup> *Simplo Obtains Dell Orders for NB Battery*, Cens.com (Dec. 22, 2003),  
[http://cens.com/cens/html/en/news/news\\_inner\\_11540.html](http://cens.com/cens/html/en/news/news_inner_11540.html).

- 1 e. selling Lithium Ion Batteries in the United States and elsewhere at collusive  
2 and noncompetitive prices;
- 3 f. accepting payment for Lithium Ion Batteries at collusive and noncompetitive  
4 prices;
- 5 g. engaging in meetings, conversations and communications in the United States  
6 and elsewhere for the purpose of monitoring and enforcing adherence to the agreed-upon price-fixing  
7 scheme; and
- 8 h. employing measures to keep their conduct secret.

9 **VI. THE INFLATED PRICES OF LITHIUM ION BATTERIES WERE PASSED**  
10 **THROUGH TO CONSUMERS**

11 333. Defendants' conspiracy to raise, fix, or maintain the price of Lithium Ion Batteries at  
12 artificial levels resulted in harm to Plaintiffs and the Classes because it resulted in them paying  
13 higher prices for Lithium Ion Battery Products than they would have in the absence of Defendants'  
14 conspiracy.

15 334. Lithium Ion Batteries are commodity-like products with functionally equivalent  
16 products available from Defendants. Defendants manufacture Lithium Ion Batteries pursuant to  
17 standard specifications.

18 335. A Lithium Ion Battery is purchased by a consumer as a stand-alone product, or as a  
19 substantial part of a Lithium Ion Battery Product. When a Lithium Ion Battery is purchased by  
20 consumers as a stand-alone product, the battery or the cell inside the battery itself is directly  
21 traceable to the specific manufacturing defendant. When a Lithium Ion Battery is purchased as part  
22 of a Lithium Ion Battery Product, it is a distinct, physically discrete element of the end-use product  
23 and is identifiable by a specific, discrete part or model number that permits tracing. Lithium Ion  
24 Batteries are traceable and identifiable throughout the chain of distribution to the end user. They do  
25 not undergo any physical alterations as they move through the chain of distribution.

26 336. The purchaser buys a Lithium Ion Battery either from the direct purchaser OEM or  
27 through a reseller such as a retailer. Thus, a Lithium Ion Battery follows a traceable physical chain  
28 from the Defendants to the OEMs, to the purchaser of the Lithium Ion Battery Product. Tracing can

1 help show that changes in the prices paid by direct purchasers of Lithium Ion Batteries affect prices  
2 paid by indirect purchasers of the Lithium Ion Batteries themselves, or Lithium Ion Battery Products.

3 337. The OEM and the retail markets of Lithium Ion Batteries and Lithium Ion Battery  
4 Products are subject to vigorous price competition. The direct purchaser OEMs and retailers have  
5 very thin net margins. They are therefore at the mercy of their component costs, such that increases  
6 in the price of Lithium Ion Batteries lead to quick, corresponding price increases at the OEM and  
7 retail levels for Lithium Ion Batteries and Lithium Ion Battery Products.

8 338. As a result, the inflated prices of Lithium Ion Batteries resulting from Defendants'  
9 price fixing conspiracy have been passed on to Plaintiffs and the Classes by direct purchasers,  
10 manufacturers, distributors and retailers.

11 339. Lithium Ion Batteries make up a substantial component cost of Lithium Ion Battery  
12 Products. The retail price of a Lithium Ion Battery Product is determined in substantial part by the  
13 cost of the Lithium Ion Battery it contains.

14 340. Thus, Plaintiffs and members of the Classes have been forced to pay supra-  
15 competitive prices for Lithium Ion Batteries and Lithium Ion Battery Products. These inflated prices  
16 have been passed on to them by direct purchaser manufacturers, distributors and retailers.

17 341. Lithium Ion Batteries are identifiable, discrete physical products that remain  
18 essentially unchanged when incorporated into a Lithium Ion Battery Product. As a result, Lithium  
19 Ion Batteries follow a traceable physical chain of distribution from the Defendants to Plaintiffs and  
20 the members of the Classes, and any costs attributable to Lithium Ion Batteries can be traced through  
21 the chain of distribution to Plaintiffs and the members of the Classes.

22 342. Just as Lithium Ion Batteries can be physically traced through the supply chain, so can  
23 their price be traced to show that changes in the prices paid by direct purchasers of Lithium Ion  
24 Batteries affect prices paid by indirect purchasers of Lithium Ion Battery Products and Lithium Ion  
25 Batteries.

26 343. While even a monopolist would increase its prices when the cost of its inputs  
27 increased, the economic necessity of passing through cost changes increases with the degree of  
28 competition a firm faces. The markets for Lithium Ion Battery Products are subject to vigorous price

1 competition. The direct purchasers of Lithium Ion Batteries have thin net margins, and are therefore  
2 at the mercy of their component costs, such that increases in the price of components such as Lithium  
3 Ion Batteries lead to corresponding increases in prices for Lithium Ion Battery Products at the  
4 consumer level. When downstream distribution markets are highly competitive, as they are in the  
5 case of Lithium Ion Battery Products, overcharges are passed through to ultimate consumers, such as  
6 the indirect-purchaser Plaintiffs and class members.

7 344. Hence the inflated prices of Lithium Ion Batteries have been passed on to Plaintiffs  
8 and other class members.

9 345. The economic and legal literature has recognized that unlawful overcharges in a  
10 component normally result in higher prices for products containing that price-fixed component. Two  
11 antitrust scholars – Professors Robert G. Harris (Professor Emeritus and former Chair of the Business  
12 and Public Policy Group at the Haas School of Business at the University of California at Berkeley)  
13 and the late Lawrence A. Sullivan (Professor of Law Emeritus at Southwestern Law School and  
14 author of the Handbook of the Law of Antitrust) – have observed that “in a multiple- level chain of  
15 distribution, passing on monopoly overcharges is not the exception: it is the rule.

16 346. As Professor Jeffrey K. MacKie-Mason (Arthur W. Burks Professor for Information  
17 and Computer Science and Professor of Economics and Public Certification), an economist who  
18 presented evidence in a number of indirect purchaser cases involving Microsoft Corporation, said (in  
19 a passage quoted in the judicial decision in that case granting class certification):

20 As is well known in economic theory and practice, at least some of the  
21 overcharge will be passed on by distributors to end consumers. When  
22 the distribution markets are highly competitive, as they are here, all or  
23 nearly the entire overcharge will be passed on through to ultimate  
24 consumers...Both of Microsoft’s experts also agree upon the economic  
phenomenon of cost pass through, and how it works in competitive  
markets. This general phenomenon of cost pass through is well  
established in antitrust laws and economics as well.

25 347. The purpose of the conspiratorial conduct of the Defendants and their co- conspirators  
26 was to raise, fix, rig or stabilize the price of Lithium Ion Batteries and as a direct and foreseeable  
27 result, the price of Lithium Ion Battery Products. Economists have developed techniques to isolate  
28 and understand the relationship between one “explanatory” variable and a “dependent” variable in

those cases when changes in the dependent variable are explained by changes in a multitude of variables, even when all such variables may be changing simultaneously. That analysis - called regression analysis - is commonly used in the real world and in litigation to determine the impact of a price increase on one cost in a product (or service) that is an assemblage of costs. Thus, it is possible to isolate and identify only the impact of an increase in the price of Lithium Ion Battery prices for Lithium Ion Battery Products even though such products contain a number of other components whose prices may be changing over time. A regression model can explain how variation in the price of Lithium Ion Batteries affects changes in the price of Lithium Ion Battery Product. In such models, the price of Lithium Ion Batteries would be treated as an independent or explanatory variable. The model can isolate how changes in the price of Lithium Ion Batteries impact the price of Lithium Ion Battery Products while controlling for the impact of other price-determining factors.

348. The precise amount of the overcharge impacting the prices of Lithium Ion Batteries and Lithium Ion Battery Products can be measured and quantified. Commonly used and well-accepted economic models can be used to measure both the extent and the amount of the supra-competitive charge passed-through the chain of distribution. Thus, the economic harm to Plaintiffs and class members can be quantified.

## **VII. ANTITRUST INJURY**

349. The effect of Defendants' conduct as described herein has been to artificially inflate the prices paid by Plaintiffs and members of the Classes for Lithium Ion Batteries and Lithium Ion Battery Products.

## **VIII. PLAINTIFFS' CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS**

### **A. The Statute of Limitations Did Not Begin to Run Because Plaintiffs Did Not and Could Not Discover Their Claims**

350. Plaintiffs and Class Members had no knowledge of the combination or conspiracy alleged herein, or of facts sufficient to place them on inquiry notice of the claims set forth herein, until (at the earliest) June 2011, when reports of the investigations into anticompetitive conduct concerning Lithium-Ion Batteries were first publicly disseminated. Even then, these reports lacked detail and were not widely disseminated. For example, Sony in June 2011 disclosed only that it

1 “received a subpoena from the U.S. Department of Justice (“DOJ”) Antitrust Division seeking  
2 information about its secondary batteries business” and that it “understands that the DOJ is  
3 investigating competition in the secondary batteries market.” This cryptic statement lacked any  
4 specifics as to the “who, what, where, when, why and how” of any potential unlawful activity.

5 351. Plaintiffs and Class Members are purchasers who indirectly purchased for their own  
6 use and not for resale either a Lithium Ion Battery manufactured by a Defendant and/or a Lithium  
7 Ion Battery Product containing a Lithium Ion Battery manufactured by a Defendant. They had no  
8 direct contact or interaction with any of the Defendants in this case and had no means from which  
9 they could have discovered the combination and conspiracy described in this Complaint before June  
10 2011, when reports of the investigations into anticompetitive conduct concerning Lithium-Ion  
11 Batteries were first publicly disseminated.

12 352. No information in the public domain was available to Plaintiffs and the Class  
13 Members prior to the public announcements of the government investigations beginning in May  
14 2011 that revealed sufficient information to suggest that any one of the Defendants was involved in a  
15 criminal conspiracy to fix prices for Lithium Ion Batteries.

16 353. Publicly, Defendants repeatedly and expressly stated throughout the Class Period,  
17 including on their public Internet websites, that they maintained antitrust / fair competition policies  
18 which prohibited the type of collusion seen in this litigation. For example:

- 19 **Samsung:** • In its “Global Code of Conduct,” dated January 2006 (“Code of Conduct”) Samsung publicly stated that “This Global Code of Conduct will be the  
20 guiding standard for everyone in Samsung Electronics, outlining standards of  
21 conduct in all business activities.”<sup>79</sup>
- 22 • Samsung publicly stated that it “will not enter into price fixing, bid collusion,  
23 market collusion or reduced production agreements with competitors, and will  
24 not discuss with competitors prices, bids, customers, sales territories and  
25 conditions including price confirmation.”<sup>80</sup>

26 <sup>79</sup> *Global Code of Conduct* at 2, 2006.1, Samsung Electronics Co., Ltd.,  
27 [http://www.samsung.com/us/aboutsamsung\\_bkup\\_20110627/ir/corporategovernance/globalcodeofconduct/IR\\_GlobalPrinciple0.html](http://www.samsung.com/us/aboutsamsung_bkup_20110627/ir/corporategovernance/globalcodeofconduct/IR_GlobalPrinciple0.html) (last visited June 30, 2013).

28 <sup>80</sup> *Id.* at 6.

- Samsung further publicly stated that it “will compete freely and fairly at all its business sites around the world, abiding by relevant international standards and national, state and local laws, with the laws of the host jurisdiction prevailing.”<sup>81</sup>
- Samsung further publicly stated in its Code of Conduct that one of the five “Samsung Values” was “Integrity,” and one of the “7 Factors of a World Leading Company” was “Trust & Credibility.”<sup>82</sup>
- Sony:**
  - Sony publicly stated on its website that “In May 2003, Sony adopted the Sony Group Code of Conduct, which sets the basic internal standards to be observed by all directors, officers and employees of the Sony Group . . . The Code of Conduct has been adopted and implemented by each Sony Group company globally and is the subject of frequent ‘tone from the top’ messaging and other training.”<sup>83</sup>
  - Sony in its “Sony Group Code of Conduct” (“Code of Conduct”) stated:

### **3.3 Fair Competition**

It is the policy of Sony Group to comply with all applicable antitrust, competition and fair trade laws and regulations of each country and region where Sony Group conducts business. These laws and regulations are designed to prohibit agreements or undertakings *vis-à-vis* third parties that fix prices, divide markets, limit production or otherwise impede or destroy market forces. Some countries or regions have antitrust or competition laws that assert extraterritorial jurisdictions over certain activities taking place outside the jurisdictions if they affect the markets of those jurisdictions. All Personnel must know and comply with those laws and regulations applicable to their jobs.

- Sanyo:**
  - Sanyo Electric Co., Ltd., in its “Code of Conduct and Ethics,” listed with an establishment date of April 1, 2006, publicly stated: “Free Competition and Fair Commercial Transactions – We will conduct our business activities lawfully and with fairness and transparency.

We will not unfairly limit free competition which would include not making arrangements with others in the same trade about product prices, volumes, manufacturing facilities, and market share.

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 2.

<sup>83</sup> *Sony Group Code of Conduct*, Sony, [http://www.sony.net/SonyInfo/csr\\_report/compliance/index2.html](http://www.sony.net/SonyInfo/csr_report/compliance/index2.html) (last visited June 30, 2013).



We will not involve ourselves in bid-rigging to decide the winning bidder and contract price in bidding.”

- Sanyo further publicly stated that “We will carry on our business activities in compliance with the laws regulations and rules of each country and region in which we operate and those prescribed specifically for respective business categories.”

**LG:** • LG, in its “LG Electronics Code of Conduct,”<sup>84</sup> issued in 2009, publicly stated that “Our Standard” was to “not accept competitor information directly from a competitor. Not only would this be an illegitimate way to gather competitive information, information-sharing with a competitor also could suggest that an improper agreement exists between competitors.”

- LG further stated in a section titled “Fair Competition: Dealing with Competitors,” that “We want to be respectful of our competitors and avoid situations that suggest improper interactions. In general, relationships among competitors can cause problems with fair competition. Our first duty is to serve our customers. We serve them by supporting the rules that encourage our continued innovation and success in a strong, competitive market.”
- LG further publicly stated that “Our Standard” is “Do not enter into any contract, agreement or formal, informal or implied understanding with a competitor without legal staff approval. Seek proper guidance before encouraging the Company to follow a competitor’s activities.”
- LG further publicly stated that “Our relationships ultimately should focus on serving our customers and working effectively with our business partners, not unfairly restricting fair trade.”
- LG publicly stated that “In 1994, LG Electronics took the initiative in practicing fair and transparent management when it became the first private company in Korea to publish an ethical code (LG Electronics Code of Ethics). In the following year, the company announced its Management by Principle which elaborates on its ethical code. In 2004, the ‘LG Code of Ethics’ and ‘LG Code of Ethics Guidelines for Practice’ were established to clearly define the company’s high standards of ethical behavior and practices to employees.”
- In its “LG Code of Ethics,” LG publicly stated “It is our intention to uphold the principle [sic] of free market economy, which embodies the spirit of fair competition . . . we regard our customers as the primary standard for our decisions and conducts [sic] . . . We are always truthful to our customers, and are bound to keep our promises . . . Chapter 2. Fair Competition . . . 1. Pursuit

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<sup>84</sup> *Creating Value for Our Stakeholders, The LG Electronics Code of Conduct*, LG Electronics (2009).

1 of Free Competition. We uphold the principle of the free market economic  
2 system. Therefore we pursue free competition, and earn our customers' trust . .  
3 .We compete fairly and capably with our competitors . . . We conduct our  
4 domestic and overseas business activities in strict accordance with local laws  
5 and regulations . . . .”

6 **Hitachi:** • Hitachi in its “Code of Conduct,” dated April 5, 2010, publicly stated that  
7 “[t]he Hitachi Group Codes of Conduct have been established as specific  
8 codes of conduct that apply to all companies of the Hitachi Group.”<sup>85</sup>

9 • Hitachi further publicly stated that “We will observe domestic and overseas  
10 competition laws and regulations as a matter of course and act appropriately as  
11 a member of society under the basic principles of conduct according to the  
12 rule of law and ethical corporate integrity and fair, transparent and free  
13 competition.”<sup>86</sup>

14 • In 2006, Hitachi-Maxell publicly issued its “Corporate Social Responsibility  
15 Report,” stated that its “Code of Conduct” was issued in June 1983 and  
16 included as its first statement that “We will comply with the laws and  
17 regulations of the countries in which we operate and observe corporate ethics.”

18 • Hitachi-Maxell further publicly stated in its 2006 report that one of the items  
19 in its “Hitachi Maxell Group Ethical Guidelines” was that “We will engage in  
20 fair, transparent and free competition, and will maintain sound and ethical  
21 relations with government and administrative bodies” and that “We will reject  
22 all contact with organizations involved in activities in violation of the law or  
23 in violation of accepted standards of responsible social behavior.”

24 • Hitachi further publicly stated in its 2006 Report: “[Ensuring Fair and Free  
25 Competition] In the interest of proactively preventing any violation of the  
26 Antimonopoly Law, in January 2006 a revised edition of the Antimonopoly  
27 Law Handbook (Hitachi Group) was distributed to employees, who are urged  
28 to adhere rigorously to its content.”

29 **Panasonic:** • Panasonic, in its “Panasonic Code of Conduct,” in place through the Class  
30 Period, publicly stated that “No matter how severe the competition may be, we  
31 will pursue fair and ethical marketing activities in compliance with all  
32 applicable laws and regulations. In other words, we will never violate any  
33 laws, regulations or social norms in pursuit of greater sales or profit.

34 <sup>85</sup> *Code of Conduct*, Hitachi, <http://www.hitachi.com/about/corporate/conduct/index.html> (last  
35 visited June 30, 2013).

36 <sup>86</sup> *Id.*

We will not engage in bribery, collusion on bids, price fixing or other cartel activities.”

- Panasonic further publicly stated that “we will respect free and fair competition, and abide by all applicable antitrust (competition law) and other laws and regulations” and that “We will fulfill our tasks by always observing not only applicable laws and regulations, but also the highest standards of business ethics” and “We will conduct business with integrity, a law-abiding spirit, and the highest ethical standards.”

**NEC:**

- NEC, in its “Code of Conduct,”<sup>87</sup> publicly stated throughout the Class Period, including to this day on its website, the following:
  - “3.2 Free Competition and Fair Commercial Transactions
  - (1) WE will conduct fair commercial transactions with all business partners based on the principle of free competition and in compliance with anti-trust, competition and fair trade laws and all other applicable laws, rules and regulations
  - (2) WE will not undertake any action that inhibits free and fair competition, including collusion and cartel formation, nor will we participate in meetings or in exchanges of information that may limit free competition or engage in any activity that may be construed as doing so.
  - (3) WE will always keep relations with customers, business partners and competitors, open and fair. In addition, we will carry out all commercial transactions with integrity by adhering to social ethics.”

**Toshiba:**

- Toshiba publicly stated in its 2008 Annual Report that “Compliance programs covering Antitrust Law and code of conduct covering sales to government and public offices have been introduced, and all sales personnel get dedicated training in these areas.”<sup>88</sup> Toshiba presently and publicly states on its website the following, and has done so since at least as early as August 2010:
  - “Directors and Employees shall:
    - 1. follow sound and fair business practices in all dealings with customers;
    - 2. promote marketing and sales that comply with all applicable laws and regulations, observe sound business practices and respect socially accepted ideas;

<sup>87</sup> NEC Group Code of Conduct, NEC, <http://www.nec.com/en/global/csr/management/code.html#sec3> (last visited July 2, 2013).

<sup>88</sup> Toshiba Corporation Annual Report 2008 at 43 (2008), *available at* <http://www.toshiba.co.jp/about/ir/en/finance/ar/ar2008.htm>

1 3. observe the SOC on “Competition Law” and endeavor to practice and  
2 promote free and fair competition;

3 \* \* \*

4 • **7. Competition Law**

5 **1. Toshiba Group Corporate Policy**

6 Toshiba Group Companies shall:

7 1. comply with any and all laws and regulations enacted for the purpose of  
8 maintaining free and fair competition (hereinafter called “Competition  
Laws”); and

9 \* \* \*

10 • **2. SOC for Toshiba Group Directors and Employees**

11 Directors and Employees shall:

12 1. observe the Competition Laws compliance programs as well as the  
13 company rules on marketing activities toward governmental agencies and  
14 promote free and fair business activities;

15 2. avoid agreements or understandings with competitors relating to pricing  
16 (including quotations and bids), the volume of production and sales,  
17 allocation of markets, customers or territories, or restrictions on production  
18 capacities or technology. The prohibition of such agreements is not limited to  
19 those actually recorded in writing by way of memoranda or minutes, but also  
20 extends to oral agreements;

21 \* \* \*

22 4. not engage in activities or organize or participate in meetings, make  
23 pledges or arrangements, or exchange information which may be a cause of  
24 concern in respect of paragraphs 2 and 3 above, or engage in any related  
25 activities or activities which may result in suspicion of engaging in such  
26 activities”<sup>89</sup>

27 354. It was reasonable for Class members who may have been exposed to these public  
28 policies to believe that the Defendants were enforcing the policies.

355. For these reasons, the statute of limitations as to Plaintiffs and the Classes’ claims did  
not begin to run, and has been tolled with respect to the claims that Plaintiffs and Class Members  
have alleged in this Complaint.

<sup>89</sup> *Toshiba Group Standards of Conduct*, Wayback Machine  
<http://web.archive.org/web/20100815060506/http://www.toshiba.co.jp/csr/en/policy/soc.htm> (last  
visited July 2, 2013).

1        **B.        Fraudulent Concealment Tolled the Statute of Limitations**

2                356.     In the alternative, application of the doctrine of fraudulent concealment tolled the  
3     statute of limitations on the claims asserted herein by Plaintiffs and the Classes. Plaintiffs and Class  
4     Members did not discover, and could not discover through the exercise of reasonable diligence, the  
5     existence of the conspiracy alleged herein until June 2011, when reports of the investigations into  
6     anticompetitive conduct concerning Lithium-Ion Batteries were first publicly disseminated.

7                357.     Before that time, Plaintiffs and Class Members were unaware of Defendants'  
8     unlawful conduct, and did not know before then that they were paying supra-competitive prices for  
9     Lithium Ion Batteries throughout the United States during the Class Period. No information, actual or  
10    constructive, was ever made available to Plaintiffs that even hinted to Plaintiffs that they were being  
11    injured by Defendants' unlawful conduct.

12              358.     The affirmative acts of Defendants alleged herein, including acts in furtherance of the  
13    conspiracy, were wrongfully concealed and carried out in a manner that precluded detection.

14              359.     Plaintiffs have detailed herein the Defendants' use of mechanisms designed to conceal  
15    their collusion, such as covert meetings, use of code words or terms to refer to competitors and/or  
16    customers, use of pretexts to mask the true purpose of collusive communications, use of non-  
17    company phones, and instructions to destroy emails evidencing collusive activities.

18              360.     By its very nature, Defendants' anticompetitive conspiracy was inherently self-  
19    concealing. Lithium Ion Batteries are not exempt from antitrust regulation, and thus, before May  
20    2011, Plaintiffs reasonably considered it to be a competitive industry. Accordingly, a reasonable  
21    person under the circumstances would not have been alerted to begin to investigate the legitimacy of  
22    Defendants' Lithium Ion Battery prices before May 2011.

23              361.     Plaintiffs and Class Members could not have discovered the alleged contract,  
24    conspiracy or combination at an earlier date by the exercise of reasonable diligence because of the  
25    deceptive practices and techniques of secrecy employed by Defendants and their co-conspirators to  
26    avoid detection of, and fraudulently conceal, their contract, combination, or conspiracy.

27              362.     Because the alleged conspiracy was both self-concealing and affirmatively concealed  
28    by Defendants and their co-conspirators, Plaintiffs and Class Members had no knowledge of the

1 alleged conspiracy, or of any facts or information that would have caused a reasonably diligent  
2 person to investigate whether a conspiracy existed, until June 2011, when reports of the  
3 investigations into anticompetitive conduct concerning Lithium Ion Batteries were first publicly  
4 disseminated.

5 363. For these reasons, the statute of limitations applicable to Plaintiffs' and Class  
6 Members' claims was tolled and did not begin to run until, at the earliest, June 2011.

7 **IX. TRADE AND COMMERCE AFFECTED BY DEFENDANTS' CONSPIRACY**

8 364. During the Class Period, Defendants collectively controlled the vast majority of the  
9 market for Lithium Ion Batteries, both globally and in the United States.

10 365. Defendants sold Lithium Ion Batteries and Lithium Ion Battery Products to  
11 manufacturers and consumers, located in numerous states in the United States other than states in  
12 which Defendants are located, substantial quantities of Lithium Ion Batteries and Lithium Ion  
13 Battery Products shipped from outside the United States and from other states in a continuous and  
14 uninterrupted flow of interstate and foreign trade and commerce.

15 366. In addition, substantial quantities of equipment and supplies necessary to the  
16 production and distribution of Lithium Ion Batteries and Lithium Ion Battery Products, as well as  
17 payments for Lithium Ion Batteries and Lithium Ion Battery Products and related products sold by  
18 Defendants, traveled in interstate and foreign trade and commerce. The business activities of  
19 Defendants in connection with the production and sale of Lithium Ion Batteries and Lithium Ion  
20 Battery Products that were the subject of the charged conspiracy were within the flow of, and  
21 substantially affected, interstate and foreign trade and commerce.

22 **A. Defendants' Conduct Involved Import Trade or Import Commerce**

23 367. Defendants' illegal conduct involved U.S. import trade or import commerce.  
24 Defendants knowingly and intentionally sent price-fixed Lithium Ion Batteries into a stream of  
25 commerce that they knew led directly into the United States, one of their most important markets and  
26 a major source of their revenues. In this respect, they directed their anticompetitive conduct at  
27 imports into the United States with the intent of causing price-fixed Lithium Ion Batteries to enter the  
28 United States market and inflating the prices of Lithium Ion Battery Products destined for the United

1 States. Such conduct was meant to produce and did in fact produce a substantial effect in the United  
2 States in the form of higher prices.

3 368. The U.S. Lithium Ion Battery market is enormous and was a major focus of and very  
4 important to the conspiracy. Defendants and others shipped millions of Lithium-Ion Batteries,  
5 including those incorporated into finished products, into the United States during the Class Period for  
6 ultimate resale to U.S. consumers. As a result, a substantial portion of Defendants' revenues were  
7 derived from the U.S. market. Defendants spent hundreds of millions of dollars on advertising their  
8 products in the United States.

9 369. Because of the importance of the U.S. market to Defendants and their co-conspirators,  
10 Lithium Ion Batteries and products containing Lithium Ion Batteries intended for importation into  
11 and ultimate consumption in the United States were a focus of Defendants' illegal conduct.  
12 Defendants knowingly and intentionally sent price-fixed Lithium Ion Batteries and products  
13 containing Lithium Ion Batteries into a stream of commerce that lead directly into the United States.  
14 Many Lithium Ion Batteries were intended for incorporation into finished products specifically  
15 destined for sale and use in the United States. This conduct by Defendants was meant to produce and  
16 did in fact produce a substantial effect in the United States in the form of artificially-inflated prices  
17 for Lithium Ion Batteries and products containing Lithium Ion Batteries.

18 370. During the Class Period, every Defendant shipped Lithium Ion Batteries directly into  
19 the United States.

20 371. When high-level executives based at Defendants' Asian headquarters agreed on  
21 prices, they knew that their price-fixed Lithium Ion Batteries would be incorporated into products  
22 containing Lithium Ion Batteries sold in the United States. Moreover, because Lithium Ion Batteries  
23 are – and were throughout the Class Period – a significant component of products containing Lithium  
24 Ion Batteries, Defendants knew that price increases for Lithium Ion Batteries would necessarily  
25 result in increased prices for products containing Lithium Ion Batteries sold in the United States.  
26 Many Defendants manufactured products containing Lithium Ion Batteries and sold them in the  
27 United States.

372. For the reasons set forth above, Defendants' illegal conduct involved import trade or import commerce into the United States.

**B. Defendants' Conduct Had a Direct, Substantial, and Reasonably Foreseeable Effect on U.S. Domestic and Import Trade or Commerce That Gave Rise to Plaintiffs' Antitrust Claims**

373. Plaintiffs and Class Members are located all across the United States, including Arizona, Arkansas, California, the District of Columbia, Florida, Illinois, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Montana, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia and Wisconsin.

374. Defendants' illegal conduct had a direct, substantial, and reasonably foreseeable effect on U.S. domestic and import trade or commerce in the form of higher prices for Lithium Ion Batteries and products containing Lithium Ion Batteries (prices that were the product of collusion) that Plaintiffs and Class Members paid. These prices, tainted by collusion, directly and immediately impacted Plaintiffs and Class Members in the United States. In this respect, the U.S. effects of Defendants' illegal conduct gave rise to Plaintiffs' and Class Members' antitrust claims and were the proximate cause of the injury that Plaintiffs and Class Members suffered.

375. A number of facts demonstrate that Defendants' price-fixing conspiracy had a direct, substantial and reasonably foreseeable effect on domestic commerce. For example, Samsung presently has posted on its website a news article titled "Samsung SDI to Supply Batteries to Dell, HP," dated April 29, 2008, stating that "Samsung SDI, the world' [sic] No. 3 maker of secondary cells, plans to supply its latest lithium-ion batteries to U.S.-based computer makers including Dell and Hewlett-Packard (HP) from July this year. 'Recently, we finalized a deal with some U.S.-based leading computer makers to supply our lithium-ion batteries,'" Samsung SDI said Tuesday."<sup>90</sup>

376. The Taiwanese packer Simplo is one of Defendants' major customers. It states on its website that its major customers for battery packs include U.S.-based laptop computer and consumer

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<sup>90</sup> See Kim Yoo-chul, *Samsung SDI to Supply Batteries to Dell, HP*, The Korea Times (April 29, 2008, available at [http://www.samsungsdi.com/f\\_news\\_view.sdi?post=E&seqno=1476](http://www.samsungsdi.com/f_news_view.sdi?post=E&seqno=1476) (last visited June 30, 2013)).



1 electronics manufacturers Apple, Dell, and HP. In December 2003, a news report regarding Simplo  
2 stated that “[t]he company estimated it would ship 2.4 million NB batteries to Hewlett Packard this  
3 year, accounting for 44% of its total shipments of 5.25 million units. The company anticipated it  
4 would see shipment grow to 8.6 million NB batteries next year” and that “[w]ith the orders from Dell  
5 and Hewlett Packard, Simplo vows to become the world’s second largest manufacturer of NB  
6 batteries next year, with its global market share to expand to between 18% and 20% from the  
7 existing 13.8%.”<sup>91</sup>

8 377. The Taiwanese packer Dynapack is one of Defendants’ major customers. A February  
9 2010 news report indicated that Dynapack “is expected to ship over 6 million battery packs to Apple  
10 for the entire year.”<sup>92</sup>

11 378. Defendants are the dominant suppliers of Lithium Ion Batteries to the major U.S.-  
12 based computer manufacturers, such as HP, Dell, and Apple, as well as other massive computer  
13 manufacturers whose products are leading brands in the U.S. The following chart from a leading  
14 battery industry research and consulting company, Avicenne Energy, details many Defendants’ shares  
15 of the leading computer manufacturers’ Lithium Ion Battery needs for portable computers in 2011.

16 379. The leading portable computer manufacturers, many of whom are listed above,  
17 dominate the United States market. The following chart illustrates their market shares of Laptop  
18 sales as well as estimates the percentage of sales of portable computers within each company’s  
19 market share:

20  
21  
22  
23  
24  
25  
26 <sup>91</sup> *Simplo Obtains Dell Orders for NB Battery*, Cens.com (Dec. 22, 2003),  
27 [http://cens.com/cens/html/en/news/news\\_inner\\_11540.html](http://cens.com/cens/html/en/news/news_inner_11540.html).

28 <sup>92</sup> *Simplo, Dynapack to See Auspicious Year in 2010*, Cens.com (Feb. 3, 2010),  
[http://cens.com/cens/html/en/news/news\\_inner\\_31131.html](http://cens.com/cens/html/en/news/news_inner_31131.html).

## Laptop PC US Market Share Estimate, 2010

Company	Total PCs (IDC)	Est. Portable PCs	Value of Shipments	Share
HP	19,488,000	12,878,178	\$8,464,182,308	26.0%
Dell	17,352,000	11,466,653	\$7,536,457,892	23.1%
Acer	8,012,000	5,294,538	\$3,479,835,214	10.7%
Apple	6,571,000	4,342,288	\$2,853,968,696	8.8%
Toshiba	6,623,000	4,376,651	\$2,876,553,747	8.8%
Others	16,964,000	11,210,253	\$7,367,938,663	22.6%
<b>Total</b>	<b>75,010,000</b>	<b>49,568,561</b>	<b>\$32,578,936,521</b>	

2010 Portable PCs as Percent of US PC Sales	66.1%
2010 Average Notebook Price:	\$657.25

### Notes:

Portable PCs estimated as 66.1% of total PC shipments as per IDC forecast.

Value of Shipments based on NPD's average notebook price for 2010.

### Sources:

<http://blog.laptopmag.com/average-windows-laptop-costs-456-down-14-percent-in-24-months>

<http://www.idc.com/getdoc.jsp?containerId=prUS23261412>

<http://techcrunch.com/2010/06/15/idc-sees-pc-market-grow-by-19-8-in-2010/>

380. Massive amounts of portable computers, containing Defendants' Lithium Ion Batteries, have been sold each year in every state in the United States. According to the U.S. Census Bureau's Current Population Survey in October 2010 (released in July 2012), nearly 76% of the population (those individuals that are three (3) years and older) had access to the Internet from their household (which would itself require access to a computer, such as a laptop or tablet computer, or a smartphone). The following chart<sup>93</sup> provides the numbers of households and percentage of population by state:

State	Total	Individual lives in household with Internet access	
		Number (in thousands)	Percent
<b>United States</b>	<b>292,065</b>	<b>221,767</b>	<b>75.9</b>
Alabama	4,503	3,016	67.0
Alaska	660	542	82.1

<sup>93</sup> Table 3-A, available at *Computer and Internet Use in the United States: 2010*, United States Census Bureau, <http://www.census.gov/hhes/computer/publications/2010.html> (last visited June 30, 2013).

State	Total	Individual lives in household with Internet access	
		Number (in thousands)	Percent
Arizona	6,340	5,017	79.1
Arkansas	2,743	1,767	64.4
California	35,181	27,524	78.2
Colorado	4,836	3,769	77.9
Connecticut	3,364	2,792	83.0
Delaware	842	646	76.8
District of Columbia	581	446	76.9
Florida	17,688	13,552	76.6
Georgia	9,296	7,027	75.6
Hawaii	1,210	952	78.7
Idaho	1,468	1,174	80.0
Illinois	12,248	9,236	75.4
Indiana	6,139	4,101	66.8
Iowa	2,843	2,170	76.3
Kansas	2,649	2,156	81.4
Kentucky	4,067	2,727	67.0
Louisiana	4,272	2,940	68.8
Maine	1,254	1,005	80.2
Maryland	5,431	4,406	81.1
Massachusetts	6,389	5,331	83.4
Michigan	9,473	7,172	75.7
Minnesota	5,001	3,959	79.2
Mississippi	2,789	1,793	64.3
Missouri	5,625	4,161	74.0
Montana	920	688	74.8
Nebraska	1,695	1,304	76.9
Nevada	2,528	2,036	80.5
New Hampshire	1,270	1,094	86.2
New Jersey	8,269	6,661	80.6
New Mexico	1,899	1,218	64.1
New York	18,549	14,388	77.6
North Carolina	8,901	6,671	74.9
North Dakota	608	486	79.9
Ohio	11,000	7,969	72.4
Oklahoma	3,505	2,503	71.4
Oregon	3,695	3,005	81.3

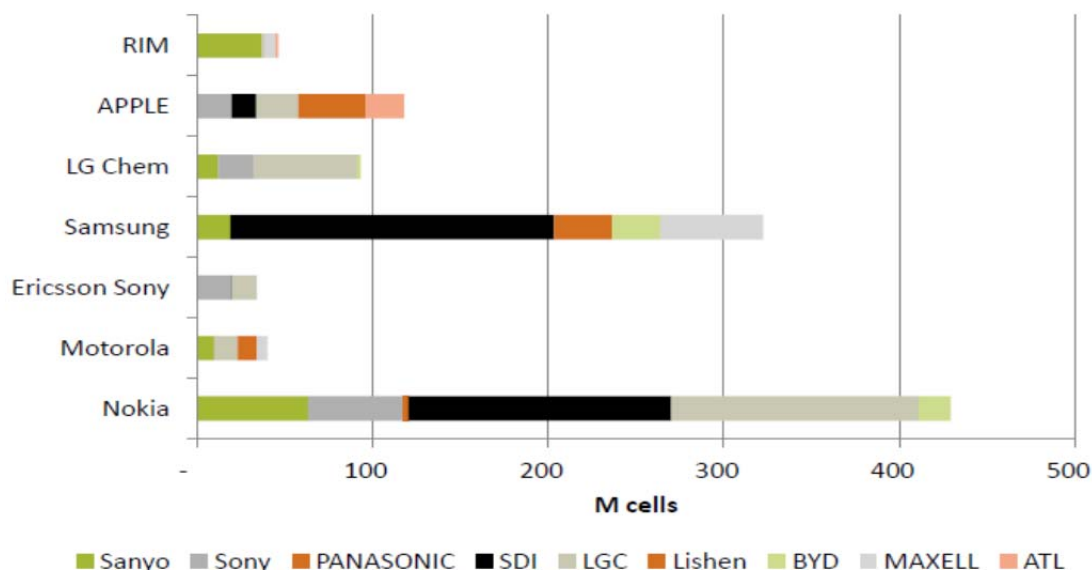
State	Total	Individual lives in household with Internet access	
		Number (in thousands)	Percent
Pennsylvania	11,981	9,296	77.6
Rhode Island	994	781	78.6
South Carolina	4,310	2,906	67.4
South Dakota	763	561	73.6
Tennessee	6,068	4,209	69.4
Texas	23,481	16,802	71.6
Utah	2,681	2,293	85.5
Virginia	7,418	5,691	76.7
Vermont	592	468	79.1
Washington	6,373	5,328	83.6
West Virginia	1,753	1,264	72.1
Wisconsin	5,401	4,349	80.5
Wyoming	521	413	79.3
Source: U.S. Census Bureau, Current Population Survey, October 2010. Internet Release date: July 2012			

381. With respect to cell phones and smart phones, in 2011, CTIA, an international trade association that represents the wireless communications industry, reported that wireless device penetration in the U.S. was 102.2%, meaning the “# of active units divided by the total U.S. and territorial population (Puerto Rico, Guam and the U.S. Virgin Islands).”<sup>94</sup> It calculated the number of wireless devices in the United States to be approximately **316,000,000**. It defined wireless devices as including “smartphones, feature phones, tablets, hotspots, etc.”

382. Figure 15 is from an industry report and details the share of total purchases by many cell and smartphone OEMs from each supplier (*e.g.*, Defendants).

<sup>94</sup> 50 *Wireless Quick Facts*, CTIA, <http://www.ctia.org/advocacy/research/index.cfm/aid/10323> (last visited June 30, 2013).

**Figure 15: Cellular Phones/Lithium Ion Battery Supplier Relationships 2011**



383. The following chart estimates the U.S. market shares of the leading cell and smart phone manufacturers:

**Mobile Phone US Market Share Estimate, 2010**

	Jan - Mar	Mar - May	July - Sep	Oct - Dec	Average Share
Samsung	21.9%	22.4%	23.5%	24.8%	23.2%
Mot	21.9%	21.2%	18.4%	16.7%	19.6%
LG	21.8%	21.5%	21.1%	20.9%	21.3%
RIM	8.3%	8.7%	9.3%	8.5%	8.7%
Nokia	8.3%	8.1%	7.4%	7.0%	7.7%
Other	17.8%	18.1%	20.3%	22.1%	19.6%

Total US Revenue \$10,700,000,000

**Notes:**

Shares are based on subscribers. Three month average for Apr - Jun was not available, so Mar - May average was used instead.

**Sources:**

[http://www.comscore.com/Insights/Press\\_Releases/2010/5/comScore\\_Reports\\_March\\_2010\\_U.S.\\_Mobile\\_Subscriber\\_Market\\_Share](http://www.comscore.com/Insights/Press_Releases/2010/5/comScore_Reports_March_2010_U.S._Mobile_Subscriber_Market_Share)  
[http://www.comscore.com/Insights/Press\\_Releases/2010/7/comScore\\_Reports\\_May\\_2010\\_U.S.\\_Mobile\\_Subscriber\\_Market\\_Share](http://www.comscore.com/Insights/Press_Releases/2010/7/comScore_Reports_May_2010_U.S._Mobile_Subscriber_Market_Share)  
[http://www.comscore.com/Insights/Press\\_Releases/2010/11/comScore\\_Reports\\_September\\_2010\\_U.S.\\_Mobile\\_Subscriber\\_Market\\_Share](http://www.comscore.com/Insights/Press_Releases/2010/11/comScore_Reports_September_2010_U.S._Mobile_Subscriber_Market_Share)  
[http://www.comscore.com/Insights/Press\\_Releases/2011/2/comScore\\_Reports\\_December\\_2010\\_U.S.\\_Mobile\\_Subscriber\\_Market\\_Share](http://www.comscore.com/Insights/Press_Releases/2011/2/comScore_Reports_December_2010_U.S._Mobile_Subscriber_Market_Share)  
<http://www.reuters.com/article/2012/01/06/idUS33079+06-Jan-2012+BW20120106>

## Smartphone Market US Market Share Estimate, 2010

	Market Share	Sales
HTC	19.0%	\$1,597,596,000
Motorola	11.0%	\$924,924,000
Samsung	7.0%	\$588,588,000
Apple	27.0%	\$2,270,268,000
RIM BlackBerry	27.0%	\$2,270,268,000
HP	1.0%	\$84,084,000
Nokia	2.0%	\$168,168,000
Other	6.0%	\$504,504,000
Total	100.0%	\$8,408,400,000

Estimate of Total Smartphone Units sold in U.S.:<sup>1</sup> 58.8 million  
Estimate of Average Selling Price (ASP): \$143  
Estimate of Total U.S. Smartphone Market Value: \$8,408,400,000

### Notes:

<sup>1</sup>Canalys reported that the U.S. smartphone market consisted of 14.7m units in Q2-2010. Yearly estimate is calculated by multiplying by 4.

### Sources:

Market Share: Ziegler, Chris. "Visualized: US smartphone market share, by manufacturer and platform, made pretty." Engadget. 3-Mar-11. Accessed 21-Jun-13. <http://www.engadget.com/2011/03/03/visualized-us-smartphone-market-share-by-manufacturer-and-plat/>.  
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ASP: Gonsalves, Antone. "Android Takes Lead In U.S. Smartphone Market." InformationWeek. 4-Aug-2010. Accessed 21-Jun-13. <http://www.informationweek.com/software/operating-systems/android-takes-lead-in-us-smartphone-market/226500293>.

## X. JURISDICTION AND VENUE

384. This Court has jurisdiction over the instant matter pursuant to 28 U.S.C. § 1332(d) and the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1711, *et seq.*, which vest original jurisdiction in the district courts of the United States for any multi-state class action where the aggregate amount in controversy exceeds \$5 million and where the citizenship of any member of the class of plaintiffs is different from that of any defendant. The \$5 million amount-in-controversy and diverse citizenship requirements of CAFA are satisfied in this case.

385. Venue is appropriate in this district under 28 U.S.C. § 1391(b) and (c). During the Class Period many of the Defendants transacted business, were found, or had agents in this district and because a substantial portion of the affected interstate trade and commerce described below has been carried out in this district.

386. This Court has personal jurisdiction over each Defendant because, *inter alia*, each Defendant: (a) transacted business throughout the United States, including in this district; (b) participated in the sale and distribution of Lithium Ion Batteries throughout the United States, including in this district; (c) had substantial contacts with the United States, including in this district; and/or (d) was engaged in an illegal conspiracy that was directed at and had the intended effect of

1 causing injury to persons residing in, located in, or doing business throughout the United States,  
2 including in this district.

3 387. Defendants engaged in conduct both inside and outside the U.S. that caused direct,  
4 substantial and reasonably foreseeable and intended anti-competitive effects upon interstate  
5 commerce within the United States.

6 388. The activities of the Defendants and their co-conspirators were within the flow of,  
7 were intended to, and did have, a substantial effect on interstate commerce of the United States.  
8 Defendants' products are sold in the flow of interstate commerce.

9 389. As described above in the previous section in more detail, Lithium Ion Batteries  
10 manufactured abroad by Defendants and sold for use in Lithium Ion Battery Products either  
11 manufactured in the United States or manufactured abroad and sold in the United States, are goods  
12 brought into the United States for sale, and therefore constitute import commerce. To the extent any  
13 Lithium Ion Batteries are not purchased in the U.S., and such Lithium Ion Batteries do not constitute  
14 import commerce, Defendants' unlawful activities with respect thereto, as more fully alleged herein  
15 during the Class period, had, and continue to have, a direct, substantial and reasonably foreseeable  
16 effect on United States commerce. The anti-competitive conduct, and its effects on United States  
17 commerce described herein, proximately caused antitrust injury to the Plaintiffs and members of the  
18 Classes in the U.S.

19 390. By reason of the unlawful activities alleged herein, Defendants substantially affected  
20 commerce throughout the U.S., causing injury to the Plaintiffs and members of the Classes.  
21 Defendants, directly and through their agents, engaged in a conspiracy affecting all states to fix or  
22 inflate prices of Lithium Ion Batteries, which unreasonably restrained trade and adversely affected  
23 the market for Lithium Ion Batteries.

24 391. Defendants' conspiracy and wrongdoing described herein adversely affected persons  
25 in the United States who purchased Lithium Ion Batteries or Lithium Ion Battery Products for  
26 personal use and not for resale, including Plaintiffs and members of the Classes.

## **XI. PARTIES**

### **A. Plaintiffs**

392. Plaintiff Thomas Tuohy is a resident of Scottsdale, Arizona. During the Class Period, Plaintiff purchased a Blackberry Curve cell phone and a Toshiba laptop containing a Lithium Ion Rechargeable Battery manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint, the Plaintiff has suffered injury. Plaintiff Tuohy is referred to herein as an “Arizona Plaintiff.”

393. Plaintiff Christopher Hunt is a resident of Phoenix, Arizona. During the Class Period, Plaintiff purchased a Sony GRZ660 Laptop and 2 COMPAQ laptops containing a Lithium Ion Battery containing a cell manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint, the Plaintiff has suffered injury. . Plaintiff Hunt is referred to herein as an “Arizona Plaintiff.”

394. Plaintiff Shawn Sellers is a resident of Phoenix, Arizona. During the Class Period, Plaintiff purchased an Apple MacBook Prop laptop containing a Lithium Ion Battery containing a cell manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint, the Plaintiff has suffered injury. Plaintiff Sellers is referred to herein as an “Arizona Plaintiff.”

395. Plaintiff A-1 Computers is a business in Jacksonville, Arkansas. During the Class Period, Plaintiff purchased a Gateway laptop containing a Lithium Ion Battery manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint, the Plaintiff has suffered injury. Plaintiff A-1 Computers is referred to herein as the “Arkansas Plaintiff.”

396. Plaintiff Brian Hanlon is a resident of San Francisco, California. During the Class Period, Plaintiff purchased a Sony Vaio Laptop containing a Lithium Ion Battery containing a cell manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint, the Plaintiff has suffered injury. Plaintiff Hanlon is referred to herein as a “California Plaintiff.”

397. Plaintiff Kevin Young is a resident of Albany, California. During the Class Period, Plaintiff purchased a Dell Notebook laptop computer containing a Lithium Ion Battery manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint, the Plaintiff has suffered injury. Plaintiff Young is referred to herein as a “California Plaintiff.”



1           398. Plaintiff Kristina Yee is a resident of San Francisco, California. During the Class  
2 Period, Plaintiff purchased an Apple laptop containing a Lithium Ion Battery containing a cell  
3 manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint, the  
4 Plaintiff has suffered injury. Plaintiff Yee is referred to herein as a “California Plaintiff.”

5           399. Plaintiff Matt Miller is a resident of Carlsbad, California. During the Class Period,  
6 Plaintiff purchased an HP Touchpad tablet containing a Lithium Ion Battery containing a cell  
7 manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint, the  
8 Plaintiff has suffered injury. Plaintiff Miller is referred to herein as a “California Plaintiff.”

9           400. Plaintiff Matthew Saba is a resident of San Jose, California. During the Class Period,  
10 Plaintiff purchased a Dell Latitude d620 laptop containing a Lithium Ion Battery containing a cell  
11 manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint, the  
12 Plaintiff has suffered injury. Plaintiff Saba is referred to herein as a “California Plaintiff.”

13           401. Plaintiff Michael Katz-Lacabe is a resident of San Leandro, California. During the  
14 Class Period, Plaintiff purchased an Apple laptop, two Dell laptops, an Apple iPhone, and an HP  
15 Touchpad tablet containing a Lithium Ion Battery containing a cell manufactured by a Defendant.  
16 As a result of the antitrust violations alleged in this complaint, the Plaintiff has suffered injury.  
17 Plaintiff Katz-Lacabe is referred to herein as a “California Plaintiff.”

18           402. Plaintiff Piya Robert Rojanasathit is a resident of San Carlos, California. During the  
19 Class Period, Plaintiff purchased lithium ion batteries, as well as, a Sony Cybershot DSC-TX10  
20 Digital Camera, a Canon Powershot SX260 Digital Camera, a Sony DSC-TX5 Digital Camera, a  
21 Canon Powershot SP1100IS Digital Camera, a Canon SD950IS Digital Camera, a Canon SD800IS  
22 Digital Camera, a Lenovo T420 laptop, HTC cell phone, and several Dell laptop computers  
23 containing a Lithium Ion Battery containing a cell manufactured by a Defendant. As a result of the  
24 antitrust violations alleged in this complaint, the Plaintiff has suffered injury. Plaintiff Rojanasathit  
25 is referred to herein as a “California Plaintiff.”

26           403. Plaintiff Richard E. Johns is a resident of San Francisco, California. During the Class  
27 Period, Plaintiff purchased an Apple iPhone containing a Lithium Ion Battery containing a cell  
28

1 manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint, the  
2 Plaintiff has suffered injury. Plaintiff Johns is referred to herein as a “California Plaintiff.”

3 404. Plaintiff Steve Bugee is a resident of San Diego, California. During the Class Period,  
4 Plaintiff purchased two Toshiba laptops containing a Lithium Ion Battery containing a cell  
5 manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint, the  
6 Plaintiff has suffered injury. Plaintiff Bugee is referred to herein as a “California Plaintiff.”

7 405. Plaintiff Tom Pham is a resident of Aliso Viejo, California. During the Class Period,  
8 Plaintiff purchased a Lithium Ion Battery containing a cell manufactured by a Defendant. As a result  
9 of the antitrust violations alleged in this complaint, the Plaintiff has suffered injury. Plaintiff Pham is  
10 referred to herein as a “California Plaintiff.”

11 406. Plaintiff Spencer Hathaway is a resident of Washington, DC. During the Class  
12 Period, Plaintiff purchased an Apple MacBook Pro laptop containing a Lithium Ion Battery  
13 manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint, the  
14 Plaintiff has suffered injury. Plaintiff Hathaway is referred to herein as the “District of Columbia  
15 Plaintiff.”

16 407. Plaintiff Bradley Seldin is a resident of Miami Beach, Florida. During the Class  
17 Period, Plaintiff purchased an Acer notebook computer containing a Lithium Ion Battery  
18 manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint, the  
19 Plaintiff has suffered injury. Plaintiff Seldin is referred to herein as a “Florida Plaintiff.”

20 408. Plaintiff Gerasimos Molfetas is a resident of Weston, Florida. During the Class  
21 Period, Plaintiff purchased an Apple iPad and a LG Sensium cell phone containing a Lithium Ion  
22 Battery containing a cell manufactured by a Defendant. As a result of the antitrust violations alleged  
23 in this complaint, the Plaintiff has suffered injury. Plaintiff Molfetas is referred to herein as a  
24 “Florida Plaintiff.”

25 409. Plaintiff Patrick McGuinness is a resident of Jacksonville, Florida. During the Class  
26 Period, Plaintiff purchased an Apple MacBook laptop containing a Lithium Ion Battery containing a  
27 cell manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint,  
28 the Plaintiff has suffered injury. Plaintiff McGuinness is referred to herein as a “Florida Plaintiff.”

1           410. Plaintiff Theodore Wolfendale is a resident of Florida. During the Class Period,  
2 Plaintiff purchased a Lithium Ion Battery. As a result of the antitrust violations alleged in this  
3 complaint, the Plaintiff has suffered injury. Plaintiff Wolfendale is referred to herein as a “Florida  
4 Plaintiff.”

5           411. Plaintiff Kathryn Knowles is a resident of Hoffman Estates, Illinois. During the Class  
6 Period, Plaintiff purchased two LG cell phones containing a Lithium Ion Battery manufactured by a  
7 Defendant. As a result of the antitrust violations alleged in this complaint, the Plaintiff has suffered  
8 injury. Plaintiff Knowles is referred to herein as the “Illinois Plaintiff.”

9           412. Plaintiff Kirsten Luenz is a resident of Overland Park, Kansas. During the Class  
10 Period, Plaintiff purchased several Apple iPhones, an Apple MacBook Pro laptop and an Apple iPod  
11 Touch each containing a Lithium Ion Battery manufactured by a Defendant. Plaintiff Luenz is  
12 referred to herein as the “Kansas Plaintiff.”

13           413. Plaintiff Jason Ames is a resident of Cape Elizabeth, Maine. During the Class Period,  
14 Plaintiff purchased a Nokia cell phone, 3 Apple iPhones, a Makita Cordless Drill and an Apple  
15 iBook G4 containing a Lithium Ion Battery manufactured by a Defendant. As a result of the antitrust  
16 violations alleged in this complaint, the Plaintiff has suffered injury. Plaintiff Ames is referred to  
17 herein as the “Maine Plaintiff.”

18           414. Plaintiff Matthew Weiner is a resident of Hopkinton, Massachusetts. During the  
19 Class Period, Plaintiff purchased a Hewlett-Packard laptop and an Apple MacBook Air laptop  
20 containing a Lithium Ion Battery manufactured by a Defendant. As a result of the antitrust violations  
21 alleged in this complaint, the Plaintiff has suffered injury. Plaintiff Weiner is referred to herein as a  
22 “Massachusetts Plaintiff.”

23           415. Plaintiff William Cabral is a resident of East Freetown, Massachusetts. During the  
24 Class Period, Plaintiff purchased a Hewlett-Packard laptop containing a Lithium Ion Battery  
25 containing a cell manufactured by a Defendant. As a result of the antitrust violations alleged in this  
26 complaint, the Plaintiff has suffered injury. Plaintiff Cabral is referred to herein as a “Massachusetts  
27 Plaintiff.”  
28

1           416. Plaintiff David Shawn is a resident of Rochester Hills, Michigan. During the Class  
2 Period, Plaintiff purchased a Dell laptop, a Canon Power Shot Digital Camera and two LG cell  
3 phones containing a Lithium Ion Battery manufactured by a Defendant. As a result of the antitrust  
4 violations alleged in this complaint, the Plaintiff has suffered injury. Plaintiff Shawn is referred to  
5 herein as a “Michigan Plaintiff.”

6           417. Plaintiff Michael D’Orazio is a resident of Farmington Hills, Michigan. During the  
7 Class Period, Plaintiff purchased an Apple iPad, a Nikon Digital Camera, a Sony Digital Camera and  
8 a Toshiba laptop containing a Lithium Ion Battery containing a cell manufactured by a Defendant.  
9 As a result of the antitrust violations alleged in this complaint, the Plaintiff has suffered injury.  
10 Plaintiff D’Orazio is referred to herein as a “Michigan Plaintiff.”

11           418. Plaintiff Robert L. McGranahan is a resident of Ann Arbor, Michigan. During the  
12 Class Period, Plaintiff purchased an Apple MacBook Pro laptop containing a Lithium Ion Battery  
13 containing a cell manufactured by a Defendant. As a result of the antitrust violations alleged in this  
14 complaint, the Plaintiff has suffered injury. Plaintiff McGranahan is referred to herein as a  
15 “Michigan Plaintiff.”

16           419. Plaintiffs Diane Beson is a resident of Minnesota. During the Class Period, plaintiffs  
17 purchased a Samsung laptop, multiple Apple iPhones, Nokia cellphones, a Canon digital camera, an  
18 Apple iPod and an Apple iPad containing a Lithium Ion Battery containing a cell manufactured by a  
19 Defendant. As a result of the antitrust violations alleged in this complaint, the Plaintiffs have  
20 suffered injury. Plaintiff Beson is referred to herein as the “Minnesota Plaintiff.”

21           420. Plaintiff Joseph O’Daniel is a resident of Lee’s Summit, Missouri. During the Class  
22 Period, Plaintiff purchased a Hewlett-Packard laptop containing a Lithium Ion Battery manufactured  
23 by a Defendant. As a result of the antitrust violations alleged in this complaint, the Plaintiff has  
24 suffered injury. Plaintiff O’Daniel is referred to herein as the “Missouri Plaintiff.”

25           421. Plaintiff Maury “Kim” Billingsley is a resident of Booneville, Mississippi. During the  
26 Class Period, Plaintiff purchased an Android cell phone and a laptop computer containing a Lithium  
27 Ion Battery manufactured by a Defendant. As a result of the antitrust violations alleged in this  
28

1 complaint, the Plaintiff has suffered injury. Plaintiff Billingsley is referred to herein as the  
2 “Mississippi Plaintiff.”

3 422. Plaintiff Benjamin Kramer is a resident of Lincoln, Nebraska. During the Class  
4 Period, Plaintiff purchased an Apple iPhone containing a Lithium Ion Battery manufactured by a  
5 Defendant. As a result of the antitrust violations alleged in this complaint, the Plaintiff has suffered  
6 injury. Plaintiff Kramer is referred to herein as the “Nebraska Plaintiff.”

7 423. Plaintiff Angela Turner is a resident of North Las Vegas, Nevada. During the Class  
8 Period, Plaintiff purchased a Nikon Cool Pix Digital Camera and an LG Remarq cell phone  
9 containing a Lithium Ion Battery manufactured by a Defendant. As a result of the antitrust violations  
10 alleged in this complaint, the Plaintiff has suffered injury. Plaintiff Turner is referred to herein as the  
11 “Nevada Plaintiff.”

12 424. Plaintiff Wilbur Franklin is a resident of Londonderry, New Hampshire. During the  
13 Class Period, Plaintiff purchased two Samsung 4GLTE cell phones and an LG Enlighten cell phone  
14 containing a Lithium Ion Battery manufactured by a Defendant. As a result of the antitrust violations  
15 alleged in this complaint, the Plaintiff has suffered injury. Plaintiff Franklin is referred to herein as  
16 the “New Hampshire Plaintiff.”

17 425. Plaintiff Michael Reilly is a resident of Albuquerque, New Mexico. During the Class  
18 Period, Plaintiff purchased a Compaq laptop computer, a Gateway personal computer and a HP  
19 laptop computer containing a Lithium Ion Battery manufactured by a Defendant. As a result of the  
20 antitrust violations alleged in this complaint, the Plaintiff has suffered injury. Plaintiff Reilly is  
21 referred to herein as the “New Mexico Plaintiff.”

22 426. Plaintiff David Tolchin is a resident of New York, New York. During the Class  
23 Period, Plaintiff purchased lithium ion batteries and a Dell laptop containing a Lithium Ion Battery  
24 containing a cell manufactured by a Defendant. As a result of the antitrust violations alleged in this  
25 complaint, the Plaintiff has suffered injury. Plaintiff Tolchin is referred to herein as a “New York  
26 Plaintiff.”

27 427. Plaintiff Matt Bryant is a resident of West Henrietta, New York. During the Class  
28 Period, Plaintiff purchased a Hewlett-Packard laptop containing a Lithium Ion Battery containing a

1 cell manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint,  
2 the Plaintiff has suffered injury. Plaintiff Bryant is referred to herein as a “New York Plaintiff.”

3 428. Plaintiff Meghan Dowling is a resident of Forest Hills, New York. During the Class  
4 Period, Plaintiff purchased a Dell laptop and an Apple iPhone containing a Lithium Ion Battery  
5 containing a cell manufactured by a Defendant. As a result of the antitrust violations alleged in this  
6 complaint, the Plaintiff has suffered injury. Plaintiff Dowling is referred to herein as a “New York  
7 Plaintiff.”

8 429. Plaintiff Valentina Juncai is a resident of Mahopac, New York. During the Class  
9 Period, Plaintiff purchased a Samsung Motorola FoTone4 cell phone and an Apple MacBook laptop  
10 containing a Lithium Ion Battery containing a cell manufactured by a Defendant. As a result of the  
11 antitrust violations alleged in this complaint, the Plaintiff has suffered injury. Plaintiff Juncai is  
12 referred to herein as a “New York Plaintiff.”

13 430. Plaintiff Kathleen Alice Tawney is a resident of Charlotte, North Carolina. During  
14 the Class Period, Plaintiff purchased two Apple MacBook Pro laptops, a Nikon D50 Digital Camera  
15 and an Apple iPad2 containing a Lithium Ion Battery manufactured by a Defendant. As a result of  
16 the antitrust violations alleged in this complaint, the Plaintiff has suffered injury. Plaintiff Tawney is  
17 referred to herein as the “North Carolina Plaintiff.”

18 431. Plaintiff Joseph Aronson is a former resident of Bismarck, North Dakota. During the  
19 Class Period, Plaintiff purchased an Apple iPhone 4 cell phone containing a Lithium Ion Battery  
20 manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint, the  
21 Plaintiff has suffered injury. Plaintiff Aronson is referred to herein as the “North Dakota Plaintiff.”

22 432. Plaintiff Sheri Harmon is a resident of Mulino, Oregon. During the Class Period,  
23 Plaintiff purchased a Canon Powershot SD 790is Digital Camera containing a Lithium Ion Battery  
24 manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint, the  
25 Plaintiff has suffered injury. Plaintiff Harmon is referred to herein as an “Oregon Plaintiff.”

26 433. Plaintiff Marilyn Sharp is a resident of Kaizer, Oregon. During the Class Period,  
27 Plaintiff purchased a Sony Cyber Shot Digital Camera and Nikon Cool Pix Digital Camera  
28 containing a Lithium Ion Battery containing a cell manufactured by a Defendant. As a result of the

1 antitrust violations alleged in this complaint, the Plaintiff has suffered injury. Plaintiff Sharp is  
2 referred to herein as an “Oregon Plaintiff.”

3 434. Plaintiff Jenny Dieter is a resident of Lexington, South Carolina. During the Class  
4 Period, Plaintiff purchased a Sony video camera containing a Lithium Ion Battery manufactured by a  
5 Defendant. As a result of the antitrust violations alleged in this complaint, the Plaintiff has suffered  
6 injury. Plaintiff Dieter is referred to herein as the “South Carolina Plaintiff.”

7 435. Plaintiff Christopher Bessette is a resident of Rapid City, South Dakota. During the  
8 Class Period, Plaintiff purchased a Toshiba laptop containing a Lithium Ion Battery manufactured by  
9 a Defendant. As a result of the antitrust violations alleged in this complaint, the Plaintiff has  
10 suffered injury. Plaintiff Bessette is referred to herein as the “South Dakota Plaintiff.”

11 436. Plaintiff Dawn Hall is a resident of Brentwood, Tennessee. During the Class Period,  
12 Plaintiff purchased a LG-Sprint cell phone containing a Lithium Ion Battery manufactured by a  
13 Defendant. As a result of the antitrust violations alleged in this complaint, the Plaintiff has suffered  
14 injury. Plaintiff Hall is referred to herein as the “Tennessee Plaintiff.”

15 437. Plaintiff Sue Hiller is a former resident of Salt Lake City, Utah. During the Class  
16 Period, Plaintiff purchased in Utah a Pantech cell phone containing a Lithium Ion Battery  
17 manufactured by a Defendant. As a result of the antitrust violations alleged in this complaint, the  
18 Plaintiff has suffered injury. Plaintiff Hiller is referred to herein as the “Utah Plaintiff.”

19 438. Plaintiff Robert Hyams is a resident of Charlotte, Vermont. During the Class Period,  
20 Plaintiff purchased a Canon EOS Digital Camera containing a Lithium Ion Battery manufactured by  
21 a Defendant. As a result of the antitrust violations alleged in this complaint, the Plaintiff has  
22 suffered injury. Plaintiff Hyams is referred to herein as the “Vermont Plaintiff.”

23 439. Plaintiff Linda Lincoln is a resident of Hurricane, West Virginia. During the Class  
24 Period, Plaintiff purchased a Dell laptop containing a Lithium Ion Battery manufactured by a  
25 Defendant. As a result of the antitrust violations alleged in this complaint, the Plaintiff has suffered  
26 injury. Plaintiff Lincoln is referred to herein as the “West Virginia Plaintiff.”

27 440. Plaintiff Bradley Van Patten is a resident of Wisconsin. During the Class Period,  
28 Plaintiff purchased a Lithium Ion Battery manufactured by a Defendant. As a result of the antitrust

violations alleged in this complaint, the Plaintiff has suffered injury. Plaintiff Van Patten is referred to herein as the “Wisconsin Plaintiff.”

**B. Governmental Plaintiffs**

441. Plaintiff San Francisco Community College District is an urban community college serving roughly 85,000 students annually at nine campuses throughout San Francisco. San Francisco Community College District offers students an affordable opportunity to earn associate degrees and pursue career and technical education. Founded in 1935, San Francisco Community College District has grown to become one of the nation’s largest public colleges, and the largest in California. San Francisco Community College District reaches out to and serves all populations, especially communities that encounter barriers to education, and seeks to build partnerships with public, private, and community-based agencies to better respond to educational, economic, environmental and societal needs. Central to San Francisco Community College District’s mission is providing students access to learning opportunities, including making available computer labs and other electronic equipment as necessary to allow student development. During the Class Period, San Francisco Community College District purchased numerous products containing Lithium Ion Batteries made by the Defendants, as well as purchasing Lithium Ion Batteries themselves. These products include camcorders, cameras and laptops containing Lithium Ion Batteries made by the Defendants. As a result of the misconduct alleged herein, San Francisco Community College District has suffered injury in that it paid more for those products than it would have been charged in the absence of the misconduct.

442. Plaintiff City of Palo Alto (“Palo Alto”) is a political subdivision of the State of California and a “Charter City” duly organized under Article XI, Section 3 of the California Constitution. Incorporated in 1894, Palo Alto is situated in the heart of California’s “Silicon Valley” and currently has a population of approximately 61,200 residents. During the Class Period, Palo Alto purchased numerous products containing Lithium Ion Batteries made by the Defendants, as well as purchasing Lithium Ion Batteries themselves. These products include camcorders, cameras and laptops containing batteries made by the Defendants. As a result of the misconduct alleged herein,



1 Palo Alto has suffered injury in that it paid more for those products than it would have been charged  
2 in the absence of the misconduct.

3 443. Plaintiff City of Richmond (“Richmond”) is a political subdivision of the State of  
4 California and a “Charter City” duly organized under Article XI, Section 3 of the California  
5 Constitution. Incorporated in 1905, Richmond is the second largest city in Contra Costa County and  
6 currently has a population of approximately 103,701 residents. During the relevant time period,  
7 Richmond purchased numerous products containing batteries made by the Defendants, as well as  
8 purchasing Lithium Ion Batteries themselves. These products include camcorders, cameras and  
9 laptops containing Lithium Ion Batteries made by the Defendants. As a result of the misconduct  
10 alleged herein, Richmond has suffered injury in that it paid more for those products than it would  
11 have been charged in the absence of the misconduct.

12 444. Plaintiffs San Francisco Community College District, City of Palo Alto, and City of  
13 Richmond are referred to herein as the “Governmental Plaintiffs.”

14 **C. Defendants**

15 445. Defendant LG Chem, Ltd. (“LG Chem”) is a Korean corporation with its principal  
16 executive offices at 20 Yeouido-dong, Yeongdeungpo-gu, Seoul, South Korea. Defendant LG Chem  
17 is an affiliate of Seoul-based conglomerate LG Electronics. LG Chem is one of the world’s leading  
18 manufacturers of Lithium Ion Batteries. Defendant LG Chem, either directly or through a wholly  
19 owned subsidiary, participated in the conspiracy alleged in this complaint and manufactured,  
20 marketed and/or sold Lithium Ion Batteries that were purchased throughout the United States,  
21 including in this district, during the Class Period.

22 446. Defendant LG Chem America, Inc. (“LGCAI”) is a New Jersey corporation with its  
23 principal place of business at 1000 Sylvan Avenue, Englewood Cliffs, New Jersey, 07632.  
24 Defendant LGCAI is a wholly owned subsidiary of Defendant LG Chem, Ltd. Defendant LG Chem  
25 America, either directly or through a wholly owned subsidiary, participated in the conspiracy alleged  
26 in this complaint and manufactured, marketed and/or sold Lithium Ion Batteries that were purchased  
27 throughout the United States, including in this district, during the Class Period.

1           447. Defendants LG Chem and LGCAI are collectively referred to herein as “LG” or “LG  
2 Chem.”

3           448. Defendant Samsung SDI Co., Ltd. (“Samsung SDI”) is a Korean corporation with its  
4 principal executive offices at 575 Shin-Dong, Youngtong-Gu, Suwon, Gyeonggi South Korea.  
5 Defendant Samsung SDI Co., Ltd. is 20 percent owned by the Korean conglomerate Samsung  
6 Electronics, Inc. Defendant Samsung SDI is the world’s largest manufacturer of Lithium Ion  
7 Batteries. Defendant Samsung SDI, either directly or through a wholly owned subsidiary,  
8 participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold  
9 Lithium Ion Batteries that were distributed throughout the United States, including in this district,  
10 during the Class Period.

11           449. Defendant Samsung SDI America, Inc. (“Samsung SDI America”) is a California  
12 corporation with its principal executive offices at 85 W. Tasman Drive, San Jose, California 95134-  
13 1703. Samsung SDI America is a wholly owned subsidiary of Defendant Samsung SDI. Defendant  
14 Samsung SDI America, either directly or through a wholly owned subsidiary, participated in the  
15 conspiracy alleged in this complaint and manufactured, marketed and/or sold Lithium Ion Batteries  
16 that were distributed throughout the United States, including in this district, during the Class Period.

17           450. Defendants Samsung SDI and Samsung SDI America are collectively referred to  
18 herein as “Samsung” or “SDI.”

19           451. Defendants LG and Samsung are referred to herein at times as the “Korean  
20 Defendants,” to distinguish them from the remaining defendants, referred to herein at times as the  
21 “Japanese Defendants.”

22           452. Defendant Panasonic Corporation is a Japanese corporation with its principal  
23 executive offices at 1006 Oaza Kadoma, Osaka 571-8501, Japan. On or about October 1, 2008,  
24 Panasonic Corporation issued a press release stating that “[e]ffective today, October 1, 2008,  
25 Matsushita Electric Industrial Co., Ltd. has become Panasonic Corporation” and also that  
26 “Matsushita Battery Industrial Co., Ltd., which used to be a wholly-owned subsidiary of Matsushita  
27 Electric Industrial Co., Ltd., has become an internal divisional company of Panasonic  
28

1 Corporation....”<sup>95</sup> Defendant Panasonic manufactures and sells Lithium Ion Batteries under the  
2 Panasonic name and also under the name of Defendant and wholly owned subsidiary Sanyo Electric  
3 Co., Ltd. With respect to those batteries sold under the Panasonic name, they are produced under  
4 Panasonic’s internal division called “Energy Company.” Defendant Panasonic Corporation is one of  
5 the world’s leading manufacturers of Lithium Ion Batteries. Defendant Panasonic Corporation, either  
6 directly or through a wholly owned subsidiary, participated in the conspiracy alleged in this  
7 complaint and manufactured, marketed and/or sold Lithium Ion Batteries that were distributed  
8 throughout the United States, including in this district, during the Class Period.

9 453. Defendant Panasonic Corporation of North America, formerly known as Matsushita  
10 Electric Corporation of America, is a Delaware Corporation with its principal executive offices at 1  
11 Panasonic Way, Secaucus, New Jersey 07094. Panasonic Corporation of North America is a wholly  
12 owned and controlled subsidiary of Defendant Panasonic Corporation. Defendant Panasonic  
13 Corporation of North America, either directly or through a wholly owned subsidiary, participated in  
14 the conspiracy alleged in this complaint and manufactured, marketed and/or sold Lithium Ion  
15 Batteries that were distributed throughout the United States, including in this district, during the  
16 Class Period.

17 454. Defendants Panasonic Corporation and Panasonic Corporation of North America are  
18 collectively referred to herein as “Panasonic.”

19 455. Defendant Sanyo Electric Co., Ltd. (“Sanyo”) is a Japanese corporation with its  
20 principal executive offices at 5-5 Keihan-Hondori, 2-chome, Moriguchi, Osaka 570-8677, Japan.  
21 Defendant Sanyo is one of the largest manufacturers and suppliers of Lithium Ion Batteries in the  
22 world. As of December 9, 2009, Defendant Sanyo became a wholly owned subsidiary of Defendant  
23 Panasonic Corporation. Defendant Sanyo, directly or through a wholly owned subsidiary, including  
24 through its joint venture Sanyo Soft Energy Co., Ltd., formed and operated with defendant GS-Yuasa  
25 Corp., participated in the conspiracy alleged in this complaint and manufactured, marketed and/or  
26

27 <sup>95</sup> *Matsushita Electric Becomes Panasonic Corporation*, Panasonic (Oct. 1, 2008),  
28 <http://panasonic.co.jp/corp/news/official.data/data.dir/en081001-4/en081001-4.html>.

1 sold Lithium Ion Batteries that were distributed throughout the United States, including in this  
2 district, during the Class Period.

3 456. Defendant Sanyo North America Corporation is a Delaware corporation with its  
4 principal executive offices at 2055 Sanyo Avenue, San Diego, California 92154. Defendant Sanyo  
5 North America Corporation is a wholly owned subsidiary of Defendant Sanyo Electric Co., Ltd.  
6 Defendant Sanyo North America Corporation, either directly or through a wholly owned subsidiary,  
7 participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold  
8 Lithium Ion Batteries that were distributed throughout the United States, including in this district,  
9 during the Class Period.

10 457. Sanyo Electric Co., Ltd., Sanyo North America Corporation, and Sanyo GS Soft  
11 Energy Co. Ltd. are collectively referred to herein as “Sanyo.”

12 458. Defendant Sony Corporation is a Japanese corporation with its principal executive  
13 offices at 7-1 Konan 1-Chome, Minato-Ku, Tokyo, Japan. Defendant Sony Corporation invented the  
14 Lithium Ion Battery in 1991 and since then, has been one of the world’s leading suppliers of Lithium  
15 Ion Batteries. Defendant Sony Corporation, either directly or through a wholly owned subsidiary,  
16 participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold  
17 Lithium Ion Batteries that were distributed throughout the United States, including in this district,  
18 during the Class Period.

19 459. Sony Energy Devices Corporation is a Japanese corporation with its principal  
20 executive offices at 1-1 Shimosugishita, Takakura, Hiwada-machi, Koriyama-shi, Fukushima, Japan.  
21 Defendant Sony Energy Devices Corporation is a wholly owned subsidiary of defendant Sony  
22 Corporation. Sony Corporation manufactures its Lithium Ion Batteries through its Sony Energy  
23 Devices Corporation subsidiary. Sony Energy Devices Corporation manufactures its Lithium Ion  
24 Batteries at plants located in Japan, Singapore, and China. Defendant Sony Energy Devices  
25 Corporation, either directly or through a wholly owned subsidiary, participated in the conspiracy  
26 alleged in this complaint and manufactured, marketed and/or sold Lithium Ion Batteries that were  
27 distributed throughout the United States, including in this district, during the Class Period.

1           460. Defendant Sony Electronics, Inc. is a Delaware corporation with its principal  
2 executive offices at 16530 Via Esprillo, San Diego, CA 92127. Defendant Sony Electronics, Inc. is a  
3 wholly owned subsidiary of defendant Sony Corporation. Defendant Sony Electronics, Inc., either  
4 directly or through a wholly owned subsidiary, participated in the conspiracy alleged in this  
5 complaint and manufactured, marketed and/or sold Lithium Ion Batteries that were distributed  
6 throughout the United States, including in this district, during the Class Period.

7           461. Defendants Sony Corporation, Sony Energy Devices Corporation, and Sony  
8 Electronics, Inc. are collectively referred to herein as “Sony.”

9           462. Defendant Hitachi Maxell, Ltd. (“Hitachi Maxell”) is a Japanese corporation with its  
10 principal executive office at 2-18-2 Iidabashi, Chiyoda-ku, Tokyo, 102-8521 Japan. Defendant  
11 Hitachi Maxell is a wholly owned subsidiary of Hitachi, Ltd. Hitachi Maxell was founded in 1960  
12 and manufactures and sells batteries through its batteries business unit. Defendant Hitachi Maxell,  
13 either directly, or through a wholly owned subsidiary, participated in the conspiracy alleged in this  
14 complaint and manufactured, marketed and/or sold Lithium Ion Batteries that were distributed  
15 throughout the United States, including in this district, during the Class Period.

16           463. Defendant Maxell Corporation of America (“Maxell”) is a New Jersey corporation  
17 with its principal executive office at 3 Garrett Mountain Plaza, 3rd Floor, Suite 300, Woodland Park,  
18 New Jersey, 07424. Defendant Maxell, either directly, or through a wholly owned subsidiary,  
19 participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold  
20 Lithium Ion Batteries that were distributed throughout the United States, including in this district,  
21 during the Class Period.

22           464. Defendants Hitachi Maxell, Ltd., and Maxell Corporation of America are collectively  
23 referred to herein as “Hitachi Maxell.”

24           465. Defendant GS Yuasa Corporation (“GS Yuasa”) is a Japanese corporation with its  
25 principal executive office at 1, Inobanba-cho, Nishinosho, Kisshoin, Minami-ku, Kyoto, 601-8520  
26 Japan.<sup>96</sup> Defendant GS Yuasa Corporation and defendant Sanyo Electric Co., Ltd. were joint venture

27           <sup>96</sup> *Corporate Information*, GS Yuasa Corporation, [http://www.gs-](http://www.gs-yuasa.com/us/corporate/profile.html)  
28 [yuasa.com/us/corporate/profile.html](http://www.gs-yuasa.com/us/corporate/profile.html) (last visited June 10, 2013).

1 parents of Sanyo GS Soft Energy Co., Ltd. (“GS Soft Energy”), which was the successor-in-interest  
2 to GS-Melcotec Co. (“GSMT”). GS Yuasa Corporation, either directly or through a wholly-owned  
3 subsidiary, including through its subsidiaries and/or affiliates GSMT and GS Soft Energy,  
4 participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold  
5 Lithium Ion Batteries that were distributed throughout the United States, including in this district,  
6 during the Class Period.

7 466. Defendant NEC Corporation is a business entity organized under the laws of Japan,  
8 with its principal place of business at 7-1, Shiba 5-chome, Minato-ku, Tokyo 108-8001, Japan.  
9 Defendant NEC Corporation either directly, or through a wholly owned subsidiary, participated in  
10 the conspiracy alleged in this complaint and manufactured, marketed and/or sold Lithium Ion  
11 Batteries that were distributed throughout the United States, including in this district, during the  
12 Class Period.

13 467. Defendant NEC Tokin Corporation is a Japanese corporation with its principal  
14 executive office at 7-1, Kohriyama 6-chome, Taihaku-ku, Sendai-shi, Miyagi 982-8510, Japan.<sup>97</sup> Its  
15 website presently states that the “Laminated lithium-ion rechargeable battery business was  
16 transferred to ‘NEC Energy Devices, Ltd.,’ on April 1, 2010.”<sup>98</sup> The “NEC Technical Journal” in  
17 2012 stated that “NEC Energy Device, Ltd. was established in 2010 for the development and  
18 manufacture of lithium-ion batteries” and that “the precursor businesses and technological  
19 developments have a history of over 20 years.”<sup>99</sup> The article continues that “NEC has been pursuing  
20 battery business by focusing on compact batteries for mobile phones and digital still cameras for  
21 consumer use” and that “[a]lthough the company names and management structures have changed a  
22 great deal since the establishment of the joint venture Moli Energy Limited in 1990.”<sup>100</sup> Defendant

23  
24 <sup>97</sup> *Corporate Outline*, NEC Tokin Corporation, <http://www.nec-tokin.com/english/info/gaiyo.html> (last visited June 10, 2013).

25 <sup>98</sup> *Product Support*, NEC Tokin Corporation, <http://www.nec-tokin.com/english/contact/inquiry.php> (last visited June 10, 2013).

26 <sup>99</sup> *Expanding Applications from Electric Vehicles to Energy Storage Systems - Unique*  
27 *Technology Offering High Safety and High Power*, 7 NEC Technical Journal, 1, at 135 (2012),  
available at [www.nec.com/en/global/techrep/journal/g12/n01/pdf/120128.pdf](http://www.nec.com/en/global/techrep/journal/g12/n01/pdf/120128.pdf).

28 <sup>100</sup> *Id.*

1 NEC Tokin Corporation, either directly, or through a wholly owned subsidiary, participated in the  
2 conspiracy alleged in this complaint and manufactured, marketed and/or sold Lithium Ion Batteries  
3 that were distributed throughout the United States, including in this district, during the Class Period.

4 468. Defendants NEC Corporation and NEC Tokin Corp. are referred to herein as “NEC.”

5 469. Defendant Toshiba Corporation (“Toshiba”) is a Japanese company with its principal  
6 executive office at 1-1, Shibaura 1-chrome, Minato-ku, Tokyo 105-8001, Japan. Defendant Toshiba  
7 Corporation, including through its subsidiaries A&T Battery Corporation and Toshiba America  
8 Electronic Components Inc., either directly, or through a wholly owned subsidiary, participated in  
9 the conspiracy alleged in this complaint and manufactured, marketed and/or sold Lithium Ion  
10 Batteries that were distributed throughout the United States, including in this district, during the  
11 Class Period.

12 470. Toshiba Corporation, and A&T Battery Corporation are collectively referred to as  
13 “Toshiba.”

14 471. All of the foreign-based defendants identified above are at times referred to herein as  
15 the “Foreign Defendants.”

16 472. All of the U.S.-based defendants identified above are at times referred to herein as the  
17 “U.S. Subsidiary Defendants.”

#### 18 **D. Agents and Co-Conspirators**

19 473. Defendants’ officers, directors, agents, employees, or representatives engaged in the  
20 conduct alleged in this Complaint in the usual management, direction, or control of Defendants’  
21 business or affairs.

22 474. Defendants are also liable for acts done in furtherance of the alleged conspiracy by  
23 companies they acquired through mergers and acquisitions.

24 475. When Plaintiffs refer to a corporate family or companies by a single name in this  
25 Complaint, they are alleging that one or more employees or agents of entities within that corporate  
26 family engaged in conspiratorial acts on behalf of every company in that family. The individual  
27 participants in the conspiratorial acts did not always know the corporate affiliation of their  
28

1 counterparts, nor did they distinguish between the entities within a corporate family. The individual  
2 participants entered into agreements on behalf of their respective corporate families. As a result,  
3 those agents represented the entire corporate family with respect to such conduct, and the corporate  
4 family was party to the agreements that those agents reached.

5 476. Each of the Defendants acted as the agent of, co-conspirator with, or joint venture  
6 partner of the other Defendants and co-conspirators with respect to the acts, violations and common  
7 course of conduct alleged in this Complaint. Each Defendant or co-conspirator that is a subsidiary of  
8 a foreign parent acted as the United States agent for Lithium Ion Batteries and/or Lithium Ion Battery  
9 Products made by its parent company.

10 477. Various persons, partnerships, sole proprietors, firms, corporations, and individuals  
11 not named as Defendants in this lawsuit, and individuals, both known and unknown, participated as  
12 co-conspirators with Defendants in the offenses alleged in this Complaint, and performed acts and  
13 made statements in furtherance of the conspiracy. Plaintiffs reserve the right to name some or all of  
14 these persons and entities as Defendants at a later date.

## 15 **XII. CLASS ACTION ALLEGATIONS**

16 478. Plaintiffs bring this action on behalf of themselves and as a class action under  
17 Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, seeking equitable and injunctive relief  
18 on behalf of the following class (the “Injunctive Class”):

19 All persons and entities residing in the United States that, during the  
20 period from January 1, 2000 to the present, indirectly purchased for  
21 their own use and not for resale either a Lithium Ion Battery  
22 manufactured by a Defendant and/or a Lithium Ion Battery Product  
23 containing a Lithium Ion Battery manufactured by a Defendant.

24 479. Plaintiffs also bring this action on behalf of themselves and as a nationwide class  
25 action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure seeking damages pursuant  
26 to California state antitrust, unfair competition, and consumer protection law on behalf of the  
27 following class (the “Nationwide Damages Class”):

28 All persons and entities residing in the United States that, during the  
period from January 1, 2000 through May 31, 2011, indirectly  
purchased for their own use and not for resale either a Lithium Ion



Battery manufactured by a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion Battery manufactured by a Defendant or co-conspirator.

480. With respect to the Nationwide Damages Class, Plaintiffs further assert the following subclass, the “Nationwide Governmental Damages Subclass”:

All non-federal and non-state governmental entities in the United States that, during the from period January 1, 2000 through May 31, 2011, indirectly purchased for their own use and not for resale either a Lithium Ion Battery manufactured by a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion Battery manufactured by a Defendant or co-conspirator.

481. As an alternative to the Nationwide Damages Class, in the event that California law is not applied to the claims of all class members for damages regardless of where they reside, or California law is not applied to class members’ claims residing in states that recognize a form of indirect purchaser cause of action, Plaintiffs will seek certification of several classes asserting claims of damages under the antitrust statutes and/or consumer protection statutes of the twenty-nine (29) jurisdictions detailed forth below, *i.e.*, Arizona, Arkansas, California, the District of Columbia, Florida, Illinois, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Montana, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia and Wisconsin (collectively, the “State Damages Classes.”).

482. For each of the State Damages Classes asserted below, other than for the New Hampshire and Utah Damages Classes, Plaintiffs further assert the following subclasses, the “State Governmental Damages Classes:”

All non-federal and non-state governmental entities in the States listed below that, during the period from January 1, 2000 through May 31, 2011, indirectly purchased for their own use and not for resale either a Lithium Ion Battery manufactured by a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion Battery manufactured by a Defendant or co-conspirator.

For the New Hampshire Governmental Damages Class, Plaintiffs begin their class period at January 1, 2008, the effective date of New Hampshire’s *Illinois Brick* repealer statute. For the Utah

1 Governmental Damages Class, Plaintiffs begin their class period at May 1, 2006, the effective date of  
2 Utah's *Illinois Brick* repealer statute.

3 483. The Injunctive Class, the Nationwide Damages Class, the State Damages Classes, the  
4 Nationwide Governmental Damages Subclass, and the State Governmental Damages Subclasses are  
5 collectively referred to herein as the "Classes" unless otherwise indicated. Excluded from the  
6 Classes are Defendants, their parent companies, subsidiaries and affiliates, Defendants' attorneys in  
7 this matter, any co-conspirators, federal governmental entities and instrumentalities of the federal  
8 government, states and their subdivisions, agencies and instrumentalities, all judges assigned to this  
9 matter, all jurors in this matter, and all persons and entities who only purchased Lithium Ion Battery  
10 Products directly or for resale.

11 484. While Plaintiffs do not know the exact number of the members of the Classes,  
12 Plaintiffs believe there are at least hundreds of thousands of members in each Class.

13 485. Common questions of law and fact exist as to all members of the Classes. This is  
14 particularly true given the nature of Defendants' conspiracy, which was applicable to all of the  
15 members of the Classes, thereby making appropriate relief with respect to the Classes as a whole.  
16 Such questions of law and fact common to the Classes include, but are not limited to:

17 (a) Whether Defendants engaged in a combination and conspiracy among  
18 themselves to fix, raise, maintain or stabilize the prices of Lithium Ion Batteries sold in the United  
19 States;

20 (b) The identity of the participants of the alleged conspiracy;

21 (c) The duration of the alleged conspiracy and the acts carried out by Defendants  
22 in furtherance of the conspiracy;

23 (d) Whether the alleged conspiracy violated the Sherman Act, as alleged in the  
24 First Claim for Relief;

25 (e) Whether the alleged conspiracy violated California's Cartwright Act, as  
26 alleged in the Second Claim for Relief;

27 (f) Whether the alleged conspiracy violated California's Unfair Competition Law,  
28 as alleged in the Third Claim for Relief;

- 1 (g) Whether the alleged conspiracy violated various state antitrust and restraint of  
2 trade laws, as alleged in the Fourth Claim for Relief;
- 3 (h) Whether the alleged conspiracy violated various state consumer protection and  
4 unfair competition laws, as alleged in the Fifth Claim for Relief;
- 5 (i) Whether the conduct of Defendants, as alleged in this Complaint, caused  
6 injury to the business or property of Plaintiffs and the members of the Classes;
- 7 (j) The effect of the alleged conspiracy on the prices of Lithium Ion Batteries and  
8 Lithium Ion Battery Products sold in the United States during the Class Period;
- 9 (k) The appropriate injunctive and related equitable relief for the Injunctive Class;
- 10 (l) The appropriate class-wide measure of damages for the Nationwide Damages  
11 Class; and
- 12 (m) The appropriate class-wide measure of damages for the State Damages  
13 Classes.

14 486. Plaintiffs' claims are typical of the claims of the members of the Classes, and  
15 Plaintiffs will fairly and adequately protect the interests of the Classes. Plaintiffs and all members of  
16 the Classes are similarly affected by Defendants' wrongful conduct in that they paid artificially  
17 inflated prices for Lithium Ion Batteries or Lithium Ion Battery Products purchased indirectly from  
18 Defendants.

19 487. Plaintiffs' claims arise out of the same common course of conduct giving rise to the  
20 claims of the other members of the Classes. Plaintiffs' interests are coincident with, and not  
21 antagonistic to, those of the other members of the Classes. Plaintiffs are represented by counsel who  
22 are competent and experienced in the prosecution of antitrust, consumer protection and class action  
23 litigation.

24 488. The questions of law and fact common to the members of the Classes predominate  
25 over any questions affecting only individual members, including legal and factual issues relating to  
26 liability and damages.

27 489. Class action treatment is a superior method for the fair and efficient adjudication of  
28 the controversy, in that, among other things, such treatment will permit a large number of similarly

1 situated persons to prosecute their common claims in a single forum simultaneously, efficiently and  
2 without the unnecessary duplication of evidence, effort and expense that numerous individual actions  
3 would engender. The benefits of proceeding through the class mechanism, including providing  
4 injured persons or entities with a method for obtaining redress for claims that it might not be  
5 practicable to pursue individually, substantially outweigh any difficulties that may arise in  
6 management of this class action.

7 490. The prosecution of separate actions by individual members of the Classes would  
8 create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct  
9 for Defendants.

10 491. Plaintiffs bring the State Damages Classes on behalf of all persons similarly situated  
11 pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all members of the  
12 following classes (and, as stated above, assert a “State Governmental Damages Subclass” as a part of  
13 each class):

- 14 (a) **Arizona**: All persons and entities that, as residents of Arizona, during the  
15 period from January 1, 2000 through May 31, 2011, indirectly purchased for  
16 their own use and not for resale either a Lithium Ion Battery manufactured by  
17 a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
18 Battery manufactured by a Defendant or co-conspirator (the “Arizona  
19 Damages Class”).
- 20 (b) **Arkansas**: All persons and entities that, as residents of Arkansas, during the  
21 period from January 1, 2000 through May 31, 2011, indirectly purchased for  
22 their own use and not for resale either a Lithium Ion Battery manufactured by  
23 a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
24 Battery manufactured by a Defendant or co-conspirator (the “Arkansas  
25 Damages Class”).
- 26 (c) **California**: All persons and entities that, as residents of California, during the  
27 period from January 1, 2000 through May 31, 2011, indirectly purchased for  
28 their own use and not for resale either a Lithium Ion Battery manufactured by  
a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
Battery manufactured by a Defendant or co-conspirator (the “California  
Damages Class”).
- (d) **District of Columbia**: All persons and entities that, as residents of the District  
of Columbia, during the period from January 1, 2000 through May 31, 2011,  
indirectly purchased for their own use and not for resale either a Lithium Ion  
Battery manufactured by a Defendant and/or a Lithium Ion Battery Product

1 containing a Lithium Ion Battery manufactured by a Defendant or co-  
2 conspirator (the “District of Columbia Damages Class”).

- 3 (e) **Florida**: All persons and entities that, as residents of Florida, during the  
4 period from January 1, 2000 through May 31, 2011, indirectly purchased for  
5 their own use and not for resale either a Lithium Ion Battery manufactured by  
6 a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
7 Battery manufactured by a Defendant or co-conspirator (the “Florida Damages  
8 Class”).
- 9 (f) **Illinois**: All persons and entities that, as residents of Illinois, during the period  
10 from January 1, 2000 through May 31, 2011, indirectly purchased for their  
11 own use and not for resale either a Lithium Ion Battery manufactured by a  
12 Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
13 Battery manufactured by a Defendant or co-conspirator (the “Illinois Damages  
14 Class”).
- 15 (g) **Kansas**: All persons and entities that, as residents of Kansas, during the period  
16 from January 1, 2000 through May 31, 2011, indirectly purchased for their  
17 own use and not for resale either a Lithium Ion Battery manufactured by a  
18 Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
19 Battery manufactured by a Defendant or co-conspirator (the “Kansas Damages  
20 Class”).
- 21 (h) **Maine**: All persons and entities that, as residents of Maine, during the period  
22 from January 1, 2000 through May 31, 2011, indirectly purchased for their  
23 own use and not for resale either a Lithium Ion Battery manufactured by a  
24 Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
25 Battery manufactured by a Defendant or co-conspirator (the “Maine Damages  
26 Class”).
- 27 (i) **Massachusetts**: All persons and entities that, as residents of Massachusetts,  
28 during the period from January 1, 2000 through May 31, 2011, indirectly  
purchased for their own use and not for resale either a Lithium Ion Battery  
manufactured by a Defendant and/or a Lithium Ion Battery Product containing  
a Lithium Ion Battery manufactured by a Defendant or co-conspirator (the  
“Massachusetts Damages Class”).
- (j) **Michigan**: All persons and entities that, as residents of Michigan, during the  
period from January 1, 2000 through May 31, 2011, indirectly purchased for  
their own use and not for resale either a Lithium Ion Battery manufactured by  
a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
Battery manufactured by a Defendant or co-conspirator (the “Michigan  
Damages Class”).
- (k) **Minnesota**: All persons and entities that, as residents of Minnesota, during  
the period from January 1, 2000 through May 31, 2011, indirectly purchased  
for their own use and not for resale either a Lithium Ion Battery manufactured

1 by a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
2 Battery manufactured by a Defendant or co-conspirator (the “Arizona  
Damages Class”).

- 3 (l) **Missouri**: All persons and entities that, as residents of Missouri, during the  
4 period from January 1, 2000 through May 31, 2011, indirectly purchased for  
5 their own use and not for resale either a Lithium Ion Battery manufactured by  
6 a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
Battery manufactured by a Defendant or co-conspirator (the “Arizona  
Damages Class”).
- 7 (m) **Mississippi**: All persons and entities that, as residents of Mississippi, during  
8 the period from January 1, 2000 through May 31, 2011, indirectly purchased  
9 for their own use and not for resale either a Lithium Ion Battery manufactured  
10 by a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
Battery manufactured by a Defendant or co-conspirator (the “Mississippi  
Damages Class”).
- 11 (n) **Montana**: All persons and entities that, as residents of Montana, during the  
12 period from January 1, 2000 through May 31, 2011, indirectly purchased for  
13 their own use and not for resale either a Lithium Ion Battery manufactured by  
14 a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
Battery manufactured by a Defendant or co-conspirator (the “Montana  
Damages Class”).
- 15 (o) **Nebraska**: All persons and entities that, as residents of Nebraska, during the  
16 period from January 1, 2000 through May 31, 2011, indirectly purchased for  
17 their own use and not for resale either a Lithium Ion Battery manufactured by  
18 a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
Battery manufactured by a Defendant or co-conspirator (the “Nebraska  
Damages Class”).
- 19 (p) **Nevada**: All persons and entities that, as residents of Nevada, during the  
20 period from January 1, 2000 through May 31, 2011, indirectly purchased for  
21 their own use and not for resale either a Lithium Ion Battery manufactured by  
22 a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
Battery manufactured by a Defendant or co-conspirator (the “Nevada  
Damages Class”).
- 23 (q) **New Hampshire**: All persons and entities that, as residents of New  
24 Hampshire, during the period from January 1, 2008 through May 31, 2011,  
25 indirectly purchased for their own use and not for resale either a Lithium Ion  
26 Battery manufactured by a Defendant and/or a Lithium Ion Battery Product  
containing a Lithium Ion Battery manufactured by a Defendant or co-  
conspirator (the “New Hampshire Damages Class”).
- 27 (r) **New Mexico**: All persons and entities that, as residents of New Mexico,  
28 during the period from January 1, 2000 through May 31, 2011, indirectly

1 purchased for their own use and not for resale either a Lithium Ion Battery  
2 manufactured by a Defendant and/or a Lithium Ion Battery Product containing  
3 a Lithium Ion Battery manufactured by a Defendant or co-conspirator (the  
“New Mexico Damages Class”).

4 (s) **New York**: All persons and entities that, as residents of New York, during the  
5 period from January 1, 2000 through May 31, 2011, indirectly purchased for  
6 their own use and not for resale either a Lithium Ion Battery manufactured by  
7 a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
Battery manufactured by a Defendant or co-conspirator (the “New York  
Damages Class”).

8 (t) **North Carolina**: All persons and entities that, as residents of North Carolina,  
9 during the period from January 1, 2000 through May 31, 2011, indirectly  
10 purchased for their own use and not for resale either a Lithium Ion Battery  
11 manufactured by a Defendant and/or a Lithium Ion Battery Product containing  
a Lithium Ion Battery manufactured by a Defendant or co-conspirator (the  
“North Carolina Damages Class”).

12 (u) **North Dakota**: All persons and entities that, as residents of North Dakota,  
13 during the period from January 1, 2000 through May 31, 2011, indirectly  
14 purchased for their own use and not for resale either a Lithium Ion Battery  
15 manufactured by a Defendant and/or a Lithium Ion Battery Product containing  
a Lithium Ion Battery manufactured by a Defendant or co-conspirator (the  
“North Dakota Damages Class”).

16 (v) **Oregon**: All persons and entities that, as residents of Oregon, during the  
17 period from January 1, 2000 through May 31, 2011, indirectly purchased for  
18 their own use and not for resale either a Lithium Ion Battery manufactured by  
19 a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
Battery manufactured by a Defendant or co-conspirator (the “Oregon  
Damages Class”).

20 (w) **South Carolina**: All persons and entities that, as residents of South Carolina,  
21 during the period from January 1, 2000 through May 31, 2011, indirectly  
22 purchased for their own use and not for resale either a Lithium Ion Battery  
23 manufactured by a Defendant and/or a Lithium Ion Battery Product containing  
a Lithium Ion Battery manufactured by a Defendant or co-conspirator (the  
“South Carolina Damages Class”).

24 (x) **South Dakota**: All persons and entities that, as residents of South Dakota,  
25 during the period from January 1, 2000 through May 31, 2011, indirectly  
26 purchased for their own use and not for resale either a Lithium Ion Battery  
27 manufactured by a Defendant and/or a Lithium Ion Battery Product containing  
a Lithium Ion Battery manufactured by a Defendant or co-conspirator (the  
“South Dakota Damages Class”).

- 1 (y) **Tennessee**: All persons and entities that, as residents of Tennessee, during the  
2 period from January 1, 2000 through May 31, 2011, indirectly purchased for  
3 their own use and not for resale either a Lithium Ion Battery manufactured by  
4 a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
5 Battery manufactured by a Defendant or co-conspirator (the “Tennessee  
6 Damages Class”).
- 7 (z) **Utah**: All persons and entities that, as residents of Utah, during the period  
8 from May 1, 2006 through May 31, 2011, indirectly purchased for their own  
9 use and not for resale either a Lithium Ion Battery manufactured by a  
10 Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
11 Battery manufactured by a Defendant or co-conspirator (the “Vermont  
12 Damages Class”).
- 13 (aa) **Vermont**: All persons and entities that, as residents of Vermont, during the  
14 period from January 1, 2000 through May 31, 2011, indirectly purchased for  
15 their own use and not for resale either a Lithium Ion Battery manufactured by  
16 a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
17 Battery manufactured by a Defendant or co-conspirator (the “Vermont  
18 Damages Class”).
- 19 (bb) **West Virginia**: All persons and entities that, as residents of West Virginia,  
20 during the period from January 1, 2000 through May 31, 2011, indirectly  
21 purchased for their own use and not for resale either a Lithium Ion Battery  
22 manufactured by a Defendant and/or a Lithium Ion Battery Product containing  
23 a Lithium Ion Battery manufactured by a Defendant or co-conspirator (the  
24 “West Virginia Damages Class”).
- 25 (cc) **Wisconsin**: All persons and entities that, as residents of Wisconsin, during the  
26 period from January 1, 2000 through May 31, 2011, indirectly purchased for  
27 their own use and not for resale either a Lithium Ion Battery manufactured by  
28 a Defendant and/or a Lithium Ion Battery Product containing a Lithium Ion  
Battery manufactured by a Defendant or co-conspirator (the “Wisconsin  
Damage Class”).

### XIII. VIOLATIONS ALLEGED

#### FIRST CLAIM FOR RELIEF (Violations of Sherman Act, 15 U.S.C. § 1) (On Behalf of All Plaintiffs Against All Defendants)

492. Plaintiffs incorporate and reallege, as though fully set forth herein, each of the paragraphs set forth above.

493. Defendants and unnamed coconspirators entered into and engaged in a contract, combination, or conspiracy in unreasonable restraint of trade in violation of Section One of the



1 Sherman Act (15 U.S.C. § 1).

2 494. Beginning as early as 2000 and continuing through May 31, 2011, the exact starting  
3 date being unknown to Plaintiffs and exclusively within the knowledge of Defendants, Defendants  
4 and their co-conspirators entered into a continuing contract, combination or conspiracy to  
5 unreasonably restrain trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C.  
6 § 1) by artificially reducing or eliminating competition in the United States.

7 495. In particular, Defendants have combined and conspired to raise, fix, maintain or  
8 stabilize the prices of Lithium Ion Batteries.

9 496. As a result of Defendants' unlawful conduct, prices for Lithium Ion Batteries were  
10 raised, fixed, maintained, and stabilized in the United States.

11 497. The contract, combination or conspiracy among Defendants consisted of a continuing  
12 agreement, understanding, and concerted action among Defendants and their co-conspirators.

13 498. For purposes of formulating and effectuating their contract, combination, or  
14 conspiracy, Defendants and their co-conspirators did those things they contracted, combined, or  
15 conspired to do, including:

16 (a) exchanged information on prices charged for Lithium Ion Batteries;  
17 (b) agreed to raise, fix, and maintain prices for Lithium Ion Batteries;  
18 (c) raised, fixed, and maintained prices for Lithium Ion Batteries; and  
19 (d) sold Lithium Ion Batteries into and throughout the U.S. at non-competitive  
20 prices.

21 499. As a result of Defendants' unlawful conduct, Plaintiffs and the other members of the  
22 Class have been injured in their businesses and property in that they have paid more for Lithium Ion  
23 Batteries and Lithium Ion Battery Products than they otherwise would have paid in the absence of  
24 Defendants' unlawful conduct.

25 500. The alleged contract, combination or conspiracy is a per se violation of the federal  
26 antitrust laws.

27 501. These violations are continuing and will continue unless enjoined by this Court.

1           502. Pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, Plaintiffs and the Class  
2 seek the issuance of an injunction against Defendants, preventing and restraining the violations  
3 alleged herein.

4                                   **SECOND CLAIM FOR RELIEF**  
5                                   **(Violations of the Cartwright Act,**  
6                                   **Cal. Bus. & Prof. Code §§ 16720, *et seq.*)**  
7                                   **(On Behalf of All Plaintiffs Against All Defendants)**

8           503. Plaintiffs incorporate by reference all the above allegations as if fully set forth herein.

9           504. By reason of the foregoing, Defendants have violated California Business and  
10 Professions Code, §§ 16700, *et seq.* California Plaintiff on behalf of a nationwide class of Indirect  
11 Purchasers alleges as follows.

12           505. Beginning at a time currently unknown to California Plaintiff, but at least as early as  
13 January 1, 2000, and continuing thereafter through May 31, 2011, Defendants and their co-  
14 conspirators entered into and engaged in a continuing unlawful trust in restraint of the trade and  
15 commerce described above in violation of section 16720, California Business and Professions Code.  
16 Defendants, and each of them, have acted in violation of section 16720 to fix, raise, stabilize, and  
17 maintain prices of, and allocate markets for Lithium Ion Batteries at supra-competitive levels.

18           506. In particular, Defendants have combined and conspired to raise, fix, maintain or  
19 stabilize the prices of Lithium Ion Batteries sold in the United States.

20           507. As a result of Defendants' unlawful conduct, prices for Lithium Ion Batteries were  
21 raised, fixed, maintained, and stabilized in the United States.

22           508. The contract, combination or conspiracy among Defendants consisted of a continuing  
23 agreement, understanding, and concerted action among Defendants and their co-conspirators.

24           509. For purposes of formulating and effectuating their contract, combination, or  
25 conspiracy, Defendants and their co-conspirators did those things they contracted, combined, or  
26 conspired to do, including:

27                   a. Participating in meetings and conversations to discuss the prices and supply of  
28 Lithium Ion Batteries.

                  b. Communicating in writing and orally to fix prices of Lithium Ion Batteries.

- 1 c. Agreeing to manipulate prices and supply of Lithium Ion Batteries sold in the  
2 United States in a manner that deprived direct and indirect purchasers of free and open competition.
- 3 d. Issuing price announcements and price quotations in accordance with the  
4 agreements reached.
- 5 e. Selling Lithium Ion Batteries to customers in the United States at non-  
6 competitive prices.
- 7 f. Providing false statements to the public to explain increased prices for Lithium  
8 Ion Batteries.

9 510. As a direct and proximate result of Defendants' unlawful conduct, California  
10 plaintiffs and the members of the California Indirect Purchaser Class have been injured in their  
11 business and property in that they paid more for Lithium Ion Batteries and Lithium Ion Battery  
12 Products than they otherwise would have paid in the absence of Defendants' unlawful conduct. As a  
13 result of Defendants' violation of Section 16720 of the California Business and Professions Code,  
14 California Plaintiff and the California Indirect Purchaser Class seek treble damages and their cost of  
15 suit, including a reasonable attorney's fee, pursuant to section 16750(a) of the California Business  
16 and Professions Code.

17 511. It is appropriate to apply California antitrust law to purchasers of Lithium Ion  
18 Batteries and Lithium Ion Battery Products in all fifty states – that is, nationwide. Nationwide  
19 application of California law is proper because three of six U.S.-based defendants (Sony Electronics,  
20 Inc., Samsung SDI America, Inc., and Sanyo North America Corp.), are headquartered in California,  
21 conspiratorial acts occurred in California, and the conspirators targeted their price-fixing activities at  
22 large purchasers of Lithium Ion Batteries and Lithium Ion Battery Products in California, such as HP  
23 and Apple.

24 512. Seven of the nine Defendant groups – LG, Panasonic, Sanyo, Sony, Samsung, Hitachi  
25 Maxell, and Toshiba – maintained sales and marketing arms in the United States to conduct business  
26 with major customers.<sup>101</sup> These Defendants are incorporated, located, and headquartered in the

27 

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<sup>101</sup> The remaining Defendant groups also have United States-based subsidiaries that do  
28 substantial business in domestic interstate commerce throughout the United States.

1 United States, and each does substantial business in domestic interstate commerce throughout the  
2 United States. For example, Defendant Samsung SDI America, Inc. maintained sales and marketing  
3 personnel in Los Angeles, Chicago, Austin, and Houston to be responsible for Dell, Apple, Lab126,  
4 Garmin, Palm, Black & Decker, Hewlett-Packard, Motorola, and other accounts. Those United  
5 States-based personnel reported to Y.A. Oh, who served simultaneously as the President of Samsung  
6 SDI America, Inc. and as the Vice President for North America of Samsung SDI Co., Ltd. Sanyo  
7 similarly stationed sales and engineering personnel in Texas to support the Hewlett-Packard and Dell  
8 accounts, and in Chicago to support the Motorola and Black & Decker accounts. Sony also  
9 responded to its United States customers' demands for lower prices by dispatching business and  
10 engineering personnel to its offices in the United States.

11 513. Furthermore, LG produced documents directly implicating the San Jose, California  
12 office of LG Chem in price-fixing.

13 514. In late 2010, Samsung and LG, including directly through LG's San Jose, California  
14 office, in furtherance of Defendants' conspiracy, expressly agreed on price levels to be charged for  
15 sales to Apple computer relating to Apple's iPad. Specifically, on December 1, 2010, at 5:03 PM,  
16 LG Chem America, Inc.'s Dong Woo Lee, a/k/a "Don Lee" or "Donny," emailed several LG  
17 executives from his San Jose, California office located at 2450 N. First St. #400. He wrote to Young  
18 Wook Chung a/k/a (Andrew (Y.O.) Chung) and four others that, regarding "K93 related information  
19 – D Company Meeting," that "I update the mutually shared K93-related information [meaning iPad  
20 information] at the meeting with D Company [meaning Samsung SDI America] today. 1. Price: \$  
21 0.42~43/Wh range. We said that our price is a little bit higher than \$0.38, and ***told them not to cut***  
22 ***the price since we currently plan to increase the price to \$0.42 level.***"

23 515. LG's Yong Wook Chung wrote back that same night to Dong Woo Lee in San Jose, at  
24 12:37 a.m., copying also LG's Young Sun Kim, Sung Jun Cho, Jung Ho Yoo and Hyunhwa Kim,  
25 stating "It's good information. Please send me the feedback after identifying if they [Samsung] can  
26 move in the same price range." LG's Young Wook Chung further wrote that same day, "***We plan to***  
27 ***go ahead with at least \$0.50, and the counterpart's [meaning Samsung] vice president Oh, Yo***  
28

1 *Ahn agreed on this, so please try to create the same kind of feeling with the counterpart, and never*  
2 *make a sound in doing so.”*

3 516. LG’s Mr. Chung wrote again that same day to Dong Woo Lee in San Jose, stating that  
4 “We said that we would raise the price at least by 10% from the existing price, and they [Samsung]  
5 also promised to commit.”

6 517. The eleven foreign-based corporations have no reasonable expectation as to the  
7 application of different state laws. Indeed, Defendants even entered into contracts specifying that  
8 California law would govern disputes. For example, Samsung produced an amendment to a “Master  
9 Goods Agreement” that it entered into with Apple Inc. appearing to indicate that “California law”  
10 would govern any disputes between them.

11 518. If the Court were to determine that California law should not apply nationwide, the  
12 Court should apply California law to the consumers in the twenty-nine states which provide standing  
13 to indirect purchasers. This is because the law of these twenty-nine states is harmonized so there is  
14 no true conflict of law here.

15 **THIRD CLAIM FOR RELIEF**  
16 **(Violations of California’s Unfair Competition Law,**  
17 **Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**  
**(On Behalf of All Plaintiffs Against All Defendants)**

18 519. Plaintiffs incorporate by reference the allegations in the above paragraphs as if fully  
19 set forth herein.

20 520. By reason of the foregoing, Defendants have violated California’s Unfair Competition  
21 Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*

22 521. Defendants committed acts of unfair competition, as defined by section 17200, *et seq.*,  
23 by engaging in a conspiracy to fix and stabilize the price of Lithium Ion Batteries as described above.

24 522. The acts, omissions, misrepresentations, practices and non-disclosures of Defendants,  
25 as described above, constitute a common and continuing course of conduct of unfair competition by  
26 means of unfair, unlawful and/or fraudulent business acts or practices with the meaning of Section  
27

17200, *et seq.*, including, but not limited to (1) violations of Section 1 of the Sherman Act; and (2) violations of the Cartwright Act.

523. Defendants' acts, omissions, misrepresentations, practices and nondisclosures are unfair, unconscionable, unlawful and/or fraudulent independently of whether they constitute a violation of the Sherman Act or the Cartwright Act.

524. Defendants' acts or practices are fraudulent or deceptive within the meaning of section 17200, *et seq.*

525. Defendants' conduct was carried out, effectuated, and perfected within the state of California. Defendants maintained offices in California where their employees engaged in communications, meetings and other activities in furtherance of Defendants' conspiracy.

526. By reason of the foregoing, the Class is entitled to application of California law to a nationwide class and are entitled to full restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as result of such business acts and practices described above.

**FOURTH CLAIM FOR RELIEF**  
**(Violation of State Antitrust and Restraint of Trade Laws)**  
**(On Behalf of All Plaintiffs Against All Defendants)**

527. Plaintiffs incorporate by reference the allegations in the above paragraphs as if fully set forth herein.

528. In the event that the Court does not apply California law on a nationwide basis, Plaintiffs allege the following violations of state antitrust and restraint of trade laws in the alternative.

529. Arizona: By reason of the foregoing, Defendants have violated Arizona Revised Statutes, §§ 44-1401, *et seq.* Arizona Plaintiff on behalf of the Arizona Damages Class alleges as follows:

a. Defendants' combination or conspiracy had the following effects: (1) price competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout Arizona; (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at

1 artificially high levels throughout Arizona; (3) Arizona Plaintiff and members of the Arizona  
2 Damages Class were deprived of free and open competition; and (4) Arizona Plaintiff and members  
3 of the Arizona Damages Class paid supra-competitive, artificially inflated prices for Lithium Ion  
4 Battery Products;

5 b. During the Class Period, Defendants' illegal conduct substantially affected  
6 Arizona commerce.

7 c. As a direct and proximate result of Defendants' unlawful conduct, Arizona  
8 Plaintiff and members of the Arizona Damages Class have been injured in their business and  
9 property and are threatened with further injury.

10 d. By reason of the foregoing, Defendants entered into agreements in restraint of  
11 trade in violation of Arizona Revised Statutes §§ 44-1401, *et seq.* Accordingly, Arizona Plaintiff and  
12 the members of the Arizona Damages Class seek all forms of relief available under Arizona Revised  
13 Statutes §§ 44-1401, *et seq.*

14 530. California: By reason of the foregoing, Defendants have violated California Business  
15 and Professions Code, § 16700, *et seq.* California Plaintiff on behalf of the California Damages  
16 Class alleges as follows:

17 a. Defendants' contract, combination, trust or conspiracy was entered in, carried  
18 out, effectuated and perfected mainly within the State of California, and Defendants' conduct within  
19 California injured all members of the class throughout the United States. Therefore, this claim for  
20 relief under California law is brought on behalf of the California Damages Class.

21 b. Beginning at a time currently unknown to California Plaintiff, but at least as  
22 early as January 1, 2000, and continuing thereafter at least up to May 31, 2011, Defendants and their  
23 co-conspirators entered into and engaged in a continuing unlawful trust in restraint of the trade and  
24 commerce described above in violation of section 16720, California Business and Professions Code.  
25 Defendants, and each of them, have acted in violation of section 16720 to fix, raise, stabilize, and  
26 maintain prices of Lithium Ion Batteries at supra-competitive levels.

27 c. The aforesaid violations of section 16720, California Business and Professions  
28 Code, consisted, without limitation, of a continuing unlawful trust and concert of action among the

1 defendants and their co-conspirators, the substantial terms of which were to fix, raise, maintain, and  
2 stabilize the prices of Lithium Ion Batteries.

3 d. For the purpose of forming and effectuating the unlawful trust, the Defendants  
4 and their co-conspirators have done those things which they combined and conspired to do, including  
5 but not in any way limited to the acts, practices and course of conduct set forth above and fixing,  
6 raising, stabilizing, and pegging the price of Lithium Ion Batteries.

7 e. The combination and conspiracy alleged herein has had, *inter alia*, the  
8 following effects: (1) price competition in the sale of Lithium Ion Batteries has been restrained,  
9 suppressed, and/or eliminated in the State of California; (2) prices for Lithium Ion Batteries have  
10 been fixed, raised, stabilized, and pegged at artificially high, noncompetitive levels in the State of  
11 California; and (3) those who purchased Lithium Ion Batteries and Lithium Ion Battery Products  
12 directly or indirectly from Defendants and their co-conspirators have been deprived of the benefit of  
13 free and open competition.

14 f. As a direct and proximate result of Defendants' unlawful conduct, California  
15 Plaintiff and the members of the California Damages Class have been injured in their business and  
16 property in that they paid more for Lithium Ion Battery Products than they otherwise would have  
17 paid in the absence of Defendants' unlawful conduct. As a result of Defendants' violation of Section  
18 16720 of the California Business and Professions Code, California Plaintiff and the California  
19 Damages Class seek treble damages and their cost of suit, including a reasonable attorney's fee,  
20 pursuant to section 16750(a) of the California Business and Professions Code.

21 531. District of Columbia: By reason of the foregoing, Defendants have violated District of  
22 Columbia Code Annotated §§ 28-4501, *et seq.* District of Columbia Plaintiff on behalf of the  
23 District of Columbia Damages Class alleges as follows:

24 a. Defendants' combination or conspiracy had the following effects: (1) price  
25 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout the  
26 District of Columbia; (2) prices for Lithium Ion Batteries were raised, fixed, maintained and  
27 stabilized at artificially high levels throughout the District of Columbia; (3) District of Columbia  
28 Plaintiff and members of the District of Columbia Damages Class were deprived of free and open



1 competition; and (4) District of Columbia Plaintiff and members of the District of Columbia  
2 Damages Class paid supra-competitive, artificially inflated prices for Lithium Ion Battery Products.

3 b. During the Class Period, Defendants' illegal conduct substantially affected  
4 District of Columbia commerce.

5 c. As a direct and proximate result of Defendants' unlawful conduct, District of  
6 Columbia Plaintiff and the District of Columbia Damages Class have been injured in their business  
7 and property and are threatened with further injury.

8 d. By reason of the foregoing, Defendants have entered into agreements in  
9 restraint of trade in violation of District of Columbia Code Annotated §§ 28-4502, *et seq.*  
10 Accordingly, District of Columbia Plaintiff and the District of Columbia Damages Class seek all  
11 forms of relief available under District of Columbia Code Annotated §§ 28-4503, *et seq.*

12 532. Illinois: By reason of the foregoing, Defendants have violated the Illinois Antitrust  
13 Act, Illinois Compiled Statutes, §§ 740 Ill. Comp. Stat. 10/1, *et seq.* Illinois Plaintiff on behalf of the  
14 Illinois Damages Class alleges as follows:

15 a. Defendants' combination or conspiracy had the following effects: (1) price  
16 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout Illinois;  
17 (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at artificially high  
18 levels throughout Illinois; (3) Illinois Plaintiff and members of the Illinois Damages Class were  
19 deprived of free and open competition; and (4) Illinois Plaintiff and members of the Illinois Damages  
20 Class paid supra-competitive, artificially inflated prices for Lithium Ion Battery Products.

21 b. During the Class Period, Defendants' illegal conduct substantially affected  
22 Illinois commerce.

23 c. As a direct and proximate result of Defendants' unlawful conduct, Illinois  
24 Plaintiff and members of the Illinois Damages Class have been injured in their business and property  
25 and are threatened with further injury.

26 d. By reason of the foregoing, Defendants entered into agreements in restraint of  
27 trade in violation of Illinois Compiled Statutes, §§ 740 Ill. Comp. Stat. 10/1, *et seq.* Accordingly,  
28

1 Illinois Plaintiff and the members of the Illinois Damages Class seek all forms of relief available  
2 under Illinois Compiled Statutes, §§ 740 Ill. Comp. Stat. 10/1, *et seq.*

3 533. Kansas: By reason of the foregoing, Defendants have violated Kansas Statutes, §§ 50-  
4 101, *et seq.* Kansas Plaintiff on behalf of the Kansas Damages Class alleges as follows:

5 a. Defendants' combination or conspiracy had the following effects: (1) price  
6 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout Kansas;  
7 (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at artificially high  
8 levels throughout Kansas; (3) Kansas Plaintiff and the Kansas Damages Class were deprived of free  
9 and open competition; and (4) Kansas Plaintiff and the Kansas Damages Class paid supra-  
10 competitive, artificially inflated prices for Lithium Ion Battery Products.

11 b. During the Class Period, Defendants' illegal conduct substantially affected  
12 Kansas commerce.

13 c. As a direct and proximate result of Defendants' unlawful conduct, Kansas  
14 Plaintiff and the Kansas Damages Class have been injured in their business and property and are  
15 threatened with further injury.

16 d. By reason of the foregoing, Defendants have entered into agreements in  
17 restraint of trade in violation of Kansas Statutes §§ 50-101, *et seq.* Accordingly, Kansas Plaintiff and  
18 the Kansas Damages Class seek all forms of relief available under Kansas Statutes §§ 50-101, *et seq.*

19 534. Maine: By reason of the foregoing, Defendants have violated the Maine Revised  
20 Statutes, 10 M.R.S. §§ 1101, *et seq.* Maine Plaintiff on behalf of the Maine Damages Class alleges  
21 as follows:

22 a. Defendants' combination or conspiracy had the following effects: (1) price  
23 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout Maine;  
24 (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at artificially high  
25 levels throughout Maine; (3) Maine Plaintiff and the Maine Damages Class were deprived of free  
26 and open competition; and (4) Maine Plaintiff and the Maine Damages Class paid supra-competitive,  
27 artificially inflated prices for Lithium Ion Battery Products.

1                   b.       During the Class Period, Defendants' illegal conduct substantially affected  
2 Maine commerce.

3                   c.       As a direct and proximate result of Defendants' unlawful conduct, Maine  
4 Plaintiff and the Maine Damages Class have been injured in their business and property and are  
5 threatened with further injury.

6                   d.       By reason of the foregoing, Defendants have entered into agreements in  
7 restraint of trade in violation of Maine Revised Statutes 10, §§ 1101, *et seq.* Accordingly, Maine  
8 Plaintiff and the Maine Damages Class seek all relief available under Maine Revised Statutes 10, §§  
9 1101, *et seq.*

10               535.   Michigan: By reason of the foregoing, Defendants have violated Michigan Compiled  
11 Laws §§ 445.773, *et seq.* Michigan Plaintiff on behalf of the Michigan Damages Class alleges as  
12 follows:

13                   a.       Defendants' combination or conspiracy had the following effects: (1) price  
14 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout  
15 Michigan; (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at  
16 artificially high levels throughout Michigan; (3) Michigan Plaintiff and the Michigan Damages Class  
17 were deprived of free and open competition; and (4) Michigan Plaintiff and the Michigan Damages  
18 Class paid supra-competitive, artificially inflated prices for Lithium Ion Battery Products.

19                   b.       During the Class Period, Defendants' illegal conduct substantially affected  
20 Michigan commerce.

21                   c.       As a direct and proximate result of Defendants' unlawful conduct, Michigan  
22 Plaintiff and the Michigan Damages Class have been injured in their business and property and are  
23 threatened with further injury.

24                   d.       By reason of the foregoing, Defendants have entered into agreements in  
25 restraint of trade in violation of Michigan Compiled Laws §§ 445.773, *et seq.* Accordingly,  
26 Michigan Plaintiff and the Michigan Damages Class seek all relief available under Michigan  
27 Compiled Laws §§ 445.73, *et seq.*  
28

1           536. Minnesota: By reason of the foregoing, Defendants have violated Minnesota Statutes  
2 §§ 325D.49, *et seq.* Minnesota Plaintiff on behalf of the Minnesota Damages Class alleges as  
3 follows:

4           a. Defendants' combination or conspiracy had the following effects: (1) price  
5 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout  
6 Minnesota; (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at  
7 artificially high levels throughout Minnesota; (3) Minnesota Plaintiff and the Minnesota Damages  
8 Class were deprived of free and open competition; and (4) Minnesota Plaintiff and the Minnesota  
9 Damages Class paid supra-competitive, artificially inflated prices for Lithium Ion Battery Products.

10          b. During the Class Period, Defendants' illegal conduct substantially affected  
11 Minnesota commerce.

12          c. As a direct and proximate result of Defendants' unlawful conduct, Minnesota  
13 Plaintiff and the Minnesota Damages Class have been injured in their business and property and are  
14 threatened with further injury.

15          d. By reason of the foregoing, Defendants have entered into agreements in  
16 restraint of trade in violation of Minnesota Statutes §§ 325D.49, *et seq.* Accordingly, Minnesota  
17 Plaintiff and the Minnesota Damages Class seek all relief available under Minnesota Statutes  
18 §§ 325D.49, *et seq.*

19           537. Mississippi: By reason of the foregoing, Defendants have violated Mississippi Code  
20 §§ 75-21-1, *et seq.* Mississippi Plaintiff on behalf of the Mississippi Damages Class alleges as  
21 follows:

22          a. Defendants' combination or conspiracy had the following effects: (1) price  
23 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout  
24 Mississippi; (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at  
25 artificially high levels throughout Mississippi; (3) Mississippi Plaintiff and the Mississippi Damages  
26 Class were deprived of free and open competition; and (4) Mississippi Plaintiff and the Mississippi  
27 Damages Class paid supra-competitive, artificially inflated prices for Lithium Ion Battery Products.

1                   b.       During the Class Period, Defendants’ illegal conduct substantially affected  
2 Mississippi commerce.

3                   c.       As a direct and proximate result of Defendants’ unlawful conduct, Mississippi  
4 Plaintiff and the Mississippi Damages Class have been injured in their business and property and are  
5 threatened with further injury.

6                   d.       By reason of the foregoing, Defendants have entered into agreements in  
7 restraint of trade in violation of Mississippi Code §§ 75-21-1, *et seq.*

8                   e.       Accordingly, Mississippi Plaintiff and the Mississippi Damages Class seek all  
9 relief available under Mississippi Code § 75-21-1, *et seq.*

10               538.   Nebraska: By reason of the foregoing, Defendants have violated Nebraska Revised  
11 Statutes §§ 59-801, *et seq.* Nebraska Plaintiff on behalf of the Nebraska Damages Class alleges as  
12 follows:

13                   a.       Defendants’ combination or conspiracy had the following effects: (1) price  
14 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout  
15 Nebraska; (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at  
16 artificially high levels throughout Nebraska; (3) Nebraska Plaintiff and the Nebraska Damages Class  
17 were deprived of free and open competition; and (4) Nebraska Plaintiff and the Nebraska Damages  
18 Class paid supra-competitive, artificially inflated prices for Lithium Ion Battery Products.

19                   b.       During the Class Period, Defendants’ illegal conduct substantially affected  
20 Nebraska commerce.

21                   c.       As a direct and proximate result of Defendants’ unlawful conduct, Nebraska  
22 Plaintiff and the Nebraska Damages Class have been injured in their business and property and are  
23 threatened with further injury.

24                   d.       By reason of the foregoing, Defendants have entered into agreements in  
25 restraint of trade in violation Nebraska Revised Statutes §§ 59-801, *et seq.* Accordingly, Nebraska  
26 Plaintiff and the Nebraska Damages Class seek all relief available under Nebraska Revised Statutes  
27 §§ 59-801, *et seq.*

1           539. Nevada: By reason of the foregoing, Defendants have violated Nevada Revised  
2 Statutes §§ 598A.010, *et seq.* Nevada Plaintiff on behalf of the Nevada Damages Class alleges as  
3 follows:

4           a. Defendants' combination or conspiracy had the following effects: (1) price  
5 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout Nevada;  
6 (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at artificially high  
7 levels throughout Nevada; (3) Nevada Plaintiff and the Nevada Damages Class were deprived of free  
8 and open competition; and (4) Nevada Plaintiff and the Nevada Damages Class paid supra-  
9 competitive, artificially inflated prices for Lithium Ion Battery Products.

10           b. During the Class Period, Defendants' illegal conduct substantially affected  
11 Nevada commerce.

12           c. As a direct and proximate result of Defendants' unlawful conduct, Nevada  
13 Plaintiff and the Nevada Damages Class have been injured in their business and property and are  
14 threatened with further injury.

15           d. By reason of the foregoing, Defendants have entered into agreements in  
16 restraint of trade in violation of Nevada Revised Statutes §§ 598A.010, *et seq.* Accordingly, Nevada  
17 Plaintiff and the Nevada Damages Class seek all relief available under Nevada Revised Statutes §§  
18 598A.010, *et seq.*

19           540. New Hampshire: By reason of the foregoing, Defendants have violated New  
20 Hampshire Revised Statutes §§ 356:1, *et seq.* New Hampshire Plaintiff on behalf of the New  
21 Hampshire Damages Class alleges as follows:

22           a. Defendants' combination or conspiracy had the following effects: (1) price  
23 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout New  
24 Hampshire; (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at  
25 artificially high levels throughout New Hampshire; (3) New Hampshire Plaintiff and the New  
26 Hampshire Damages Class were deprived of free and open competition; and (4) New Hampshire  
27 Plaintiff and the New Hampshire Damages Class paid supra-competitive, artificially inflated prices  
28 for Lithium Ion Battery Products.

1                   b.       During the Class Period, Defendants’ illegal conduct substantially affected  
2 New Hampshire commerce.

3                   c.       As a direct and proximate result of Defendants’ unlawful conduct, New  
4 Hampshire Plaintiff and the New Hampshire Damages Class have been injured in their business and  
5 property and are threatened with further injury.

6                   d.       By reason of the foregoing, Defendants have entered into agreements in  
7 restraint of trade in violation of New Hampshire Revised Statutes §§ 356:1, *et seq.* Accordingly,  
8 New Hampshire Plaintiff and the New Hampshire Damages Class seek all relief available under New  
9 Hampshire Revised Statutes §§ 356:1, *et seq.*

10               541.   New Mexico: By reason of the foregoing, Defendants have violated New Mexico  
11 Statutes §§ 57-1-1, *et seq.* New Mexico Plaintiff on behalf of the New Mexico Damages Class  
12 alleges as follows:

13                   a.       Defendants’ combination or conspiracy had the following effects: (1) price  
14 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout New  
15 Mexico; (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at  
16 artificially high levels throughout New Mexico; (3) New Mexico Plaintiff and the New Mexico  
17 Damages Class were deprived of free and open competition; and (4) New Mexico Plaintiff and the  
18 New Mexico Damages Class paid supra-competitive, artificially inflated prices for Lithium Ion  
19 Battery Products.

20                   b.       During the Class Period, Defendants’ illegal conduct substantially affected  
21 New Mexico commerce.

22                   c.       As a direct and proximate result of Defendants’ unlawful conduct, New  
23 Mexico Plaintiff and the New Mexico Damages Class have been injured in their business and  
24 property and are threatened with further injury.

25                   d.       By reason of the foregoing, Defendants have entered into agreements in  
26 restraint of trade in violation of New Mexico Statutes §§ 57-1-1, *et seq.* Accordingly, New Mexico  
27 Plaintiff and the New Mexico Damages Class seek all relief available under New Mexico Statutes §§  
28 57-1-1, *et seq.*

1           542. New York: By reason of the foregoing, Defendants have violated New York General  
2 Business Laws §§ 340, *et seq.* New York Plaintiff on behalf of the New York Damages Class  
3 alleges as follows:

4           a. Defendants' combination or conspiracy had the following effects: (1) price  
5 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout New  
6 York; (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at artificially  
7 high levels throughout New York; (3) New York Plaintiff and the New York Damages Class were  
8 deprived of free and open competition; and (4) New York Plaintiff and the New York Damages  
9 Class paid supra-competitive, artificially inflated prices for Lithium Ion Battery Products.

10           b. During the Class Period, Defendants' illegal conduct substantially affected  
11 New York commerce.

12           c. As a direct and proximate result of Defendants' unlawful conduct, New York  
13 Plaintiff and the New York Damages Class have been injured in their business and property and are  
14 threatened with further injury.

15           d. By reason of the foregoing, Defendants have entered into agreements in  
16 restraint of trade in violation of New York General Business Laws §§ 340, *et seq.* Accordingly, New  
17 York Plaintiff and the New York Damages Class seek all relief available under New York General  
18 Business Laws §§ 340, *et seq.*

19           543. North Carolina: By reason of the foregoing, Defendants have violated North Carolina  
20 General Statutes §§ 75-1, *et seq.* North Carolina Plaintiff on behalf of the North Carolina Damages  
21 Class alleges as follows:

22           a. Defendants' combination or conspiracy had the following effects: (1) price  
23 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout North  
24 Carolina; (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at  
25 artificially high levels throughout North Carolina; (3) North Carolina Plaintiff and the North  
26 Carolina Damages Class were deprived of free and open competition; and (4) North Carolina  
27 Plaintiff and the North Carolina Damages Class paid supra-competitive, artificially inflated prices for  
28 Lithium Ion Battery Products.



1                   b.       During the Class Period, Defendants’ illegal conduct substantially affected  
2 North Carolina commerce.

3                   c.       As a direct and proximate result of Defendants’ unlawful conduct, North  
4 Carolina Plaintiff and the North Carolina Damages Class have been injured in their business and  
5 property and are threatened with further injury.

6                   d.       By reason of the foregoing, Defendants have entered into agreements in  
7 restraint of trade in violation of North Carolina General Statutes §§ 75-1, *et seq.* Accordingly, North  
8 Carolina Plaintiff and the North Carolina Damages Class seek all relief available under North  
9 Carolina General Statutes §§ 75-1, *et seq.*

10               544.   North Dakota: By reason of the foregoing, Defendants have violated North Dakota  
11 Century Code §§ 51-08.1-01, *et seq.* North Dakota Plaintiff on behalf of the North Dakota Damages  
12 Class alleges as follows:

13                   a.       Defendants’ combination or conspiracy had the following effects: (1) price  
14 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout North  
15 Dakota; (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at  
16 artificially high levels throughout North Dakota; (3) North Dakota Plaintiff and the North Dakota  
17 Damages Class were deprived of free and open competition; and (4) North Dakota Plaintiff and the  
18 North Dakota Damages Class paid supra-competitive, artificially inflated prices for Lithium Ion  
19 Battery Products.

20                   b.       During the Class Period, Defendants’ illegal conduct had a substantial effect  
21 on North Dakota commerce.

22                   c.       As a direct and proximate result of Defendants’ unlawful conduct, North  
23 Dakota Plaintiff and the North Dakota Damages Class have been injured in their business and  
24 property and are threatened with further injury.

25                   d.       By reason of the foregoing, Defendants have entered into agreements in  
26 restraint of trade in violation of North Dakota Century Code §§ 51-08.1-01, *et seq.* Accordingly,  
27 North Dakota Plaintiff and the North Dakota Damages Class seek all relief available under North  
28 Dakota Century Code §§ 51-08.1-01, *et seq.*

1           545. Oregon: By reason of the foregoing, Defendants have violated Oregon Revised  
2 Statutes §§ 646.705, *et seq.* Oregon Plaintiffs on behalf of the Oregon Damages Class allege as  
3 follows:

4           a. Defendants' combination or conspiracy had the following effects: (1) price  
5 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout Oregon;  
6 (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at artificially high  
7 levels throughout Oregon; (3) Oregon Plaintiffs and the Oregon Damages Class were deprived of  
8 free and open competition; and (4) Oregon Plaintiffs and the Oregon Damages Class paid supra-  
9 competitive, artificially inflated prices for Lithium Ion Battery Products.

10           b. During the Class Period, Defendants' illegal conduct had a substantial effect  
11 on Oregon commerce.

12           c. As a direct and proximate result of Defendants' unlawful conduct, Oregon  
13 Plaintiffs and the Oregon Damages Class have been injured in their business and property and are  
14 threatened with further injury.

15           d. By reason of the foregoing, Defendants have entered into agreements in  
16 restraint of trade in violation of Oregon Revised Statutes §§ 646.705, *et seq.* Accordingly, Oregon  
17 Plaintiffs and the Oregon Damages Class seek all relief available under Oregon Revised Statutes  
18 §§ 646.705, *et seq.*

19           Accordingly,

20           546. Tennessee: By reason of the foregoing, Defendants have violated Tennessee Code §§  
21 47-25-101, *et seq.* Tennessee Plaintiff on behalf of the Tennessee Damages Class alleges as follows:

22           a. Defendants' combination or conspiracy had the following effects: (1) price  
23 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout  
24 Tennessee; (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at  
25 artificially high levels throughout Tennessee; (3) Tennessee Plaintiff and the Tennessee Damages  
26 Class were deprived of free and open competition; and (4) Tennessee Plaintiff and the Tennessee  
27 Damages Class paid supra-competitive, artificially inflated prices for Lithium Ion Battery Products.

1                   b.       During the Class Period, Defendants' illegal conduct had a substantial effect  
2 on Tennessee commerce as products containing Lithium Ion Batteries were sold in Tennessee.

3                   c.       As a direct and proximate result of Defendants' unlawful conduct, Tennessee  
4 Plaintiff and the Tennessee Damages Class have been injured in their business and property and are  
5 threatened with further injury.

6                   d.       By reason of the foregoing, Defendants have entered into agreements in  
7 restraint of trade in violation of Tennessee Code §§ 47-25-101, *et seq.* Accordingly, Tennessee  
8 Plaintiff and the Tennessee Damages Class seek all relief available under Tennessee Code §§ 47-25-  
9 101, *et seq.*

10               547.   Vermont: By reason of the foregoing, Defendants have violated Vermont Stat. Ann. 9  
11 §§ 2453, *et seq.* Vermont Plaintiff on behalf of the Vermont Damages Class alleges as follows:

12                   a.       Defendants' combination or conspiracy had the following effects: (1) price  
13 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout  
14 Vermont; (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at  
15 artificially high levels throughout Vermont; (3) Vermont Plaintiff and the Vermont Damages Class  
16 were deprived of free and open competition; and (4) Vermont Plaintiff and the Vermont Damages  
17 Class paid supra-competitive, artificially inflated prices for Lithium Ion Battery Products.

18                   b.       During the Class Period, Defendants' illegal conduct had a substantial effect  
19 on Vermont commerce.

20                   c.       As a direct and proximate result of Defendants' unlawful conduct, Vermont  
21 Plaintiff and the Vermont Damages Class have been injured in their business and property and are  
22 threatened with further injury.

23                   d.       By reason of the foregoing, Defendants have entered into agreements in  
24 restraint of trade in violation of Vermont Stat. Ann. 9 §§ 2453, *et seq.* Accordingly, Vermont  
25 Plaintiff and the Vermont Damages Class seek all relief available under Vermont Stat. Ann. 9  
26 §§ 2453, *et seq.*

1           548.   West Virginia: By reason of the foregoing, Defendants have violated West Virginia  
2 Code §§ 47-18-1, *et seq.* West Virginia Plaintiff on behalf of the West Virginia Damages Class  
3 alleges as follows:

4           a.       Defendants' combination or conspiracy had the following effects: (1) price  
5 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout West  
6 Virginia; (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at  
7 artificially high levels throughout West Virginia; (3) West Virginia Plaintiff and the West Virginia  
8 Damages Class were deprived of free and open competition; and (4) West Virginia Plaintiff and the  
9 West Virginia Damages Class paid supra-competitive, artificially inflated prices for Lithium Ion  
10 Battery Products.

11           b.       During the Class Period, Defendants' illegal conduct had a substantial effect  
12 on West Virginia commerce.

13           c.       As a direct and proximate result of Defendants' unlawful conduct, West  
14 Virginia Plaintiff and the West Virginia Damages Class have been injured in their business and  
15 property and are threatened with further injury.

16           d.       By reason of the foregoing, Defendants have entered into agreements in  
17 restraint of trade in violation of West Virginia Code §§ 47-18-1, *et seq.* Accordingly, West Virginia  
18 Plaintiff and the West Virginia Damages Class seek all relief available under West Virginia Code §§  
19 47-18-1, *et seq.*

20           549.   Wisconsin: By reason of the foregoing, Defendants have violated Wisconsin Statutes  
21 §§ 133.01, *et seq.* Wisconsin Plaintiff on behalf of the Wisconsin Damages Class alleges as follows:

22           a.       Defendants' combination or conspiracy had the following effects: (1) price  
23 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout  
24 Wisconsin; (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at  
25 artificially high levels throughout Wisconsin; (3) Wisconsin Plaintiff and the Wisconsin Damages  
26 Class were deprived of free and open competition; and (4) Wisconsin Plaintiff and the Wisconsin  
27 Damages Class paid supra-competitive, artificially inflated prices for Lithium Ion Battery Products.  
28

b. During the Class Period, Defendants' illegal conduct had a substantial effect on Wisconsin commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Wisconsin Plaintiff and the Wisconsin Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Wisconsin Statutes §§ 133.01, *et seq.* Accordingly, Wisconsin Plaintiff and the Wisconsin Damages Class seek all relief available under Wisconsin Statutes §§ 133.01, *et seq.*

**FIFTH CLAIM FOR RELIEF**  
**(Violation of State Consumer Protection and Unfair Competition Laws)**  
**(On Behalf of All Plaintiffs Against All Defendants)**

550. Plaintiffs incorporate by reference the allegations in the above paragraphs as if fully set forth herein.

551. In the event that the Court does not apply California law on a nationwide basis, Plaintiffs allege the following violations of state consumer protection and unfair competition laws in the alternative.

552. Defendants engaged in unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of the state consumer protection and unfair competition statutes listed below.

553. Arkansas: By reason of the foregoing, Defendants have violated Arkansas's laws by engaging in unfair competition or unconscionable, unfair or deceptive acts or practices in violation of AR ST §4-88-101 *et seq.*

554. California: By reason of the foregoing, Defendants have violated California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* California Plaintiff on behalf of the California Damages Class alleges as follows:

1           a. Defendants committed acts of unfair competition, as defined by section 17200,  
2 *et seq.*, by engaging in a conspiracy to fix and stabilize the price of Lithium Ion Batteries as  
3 described above.

4           b. The acts, omissions, misrepresentations, practices and non-disclosures of  
5 Defendants, as described above, constitute a common and continuing course of conduct of unfair  
6 competition by means of unfair, unlawful and/or fraudulent business acts or practices with the  
7 meaning of section 17200, *et seq.*, including, but not limited to (1) violation of Section 1 of the  
8 Sherman Act; (2) violation of the Cartwright Act.

9           c. Defendants' acts, omissions, misrepresentations, practices and nondisclosures  
10 are unfair, unconscionable, unlawful and/or fraudulent independently of whether they constitute a  
11 violation of the Sherman Act or the Cartwright Act.

12           d. Defendants' acts or practices are fraudulent or deceptive within the meaning  
13 of section 17200, *et seq.*

14           e. Defendants' conduct was carried out, effectuated, and perfected within the  
15 State of California. Defendants maintained offices in California where their employees engaged in  
16 communications, meetings and other activities in furtherance of Defendants' conspiracy.

17           f. By reason of the foregoing, California Plaintiff and the California Damages  
18 Class are entitled to full restitution and/or disgorgement of all revenues, earnings, profits,  
19 compensation, and benefits that may have been obtained by Defendants as result of such business  
20 acts and practices described above.

21           555. Florida: By reason of the foregoing, Defendants have violated the Florida Deceptive  
22 and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.* Florida Plaintiff on behalf of the  
23 Florida Damages Class alleges as follows:

24           a. Defendants' unlawful conduct had the following effects: (1) price  
25 competition for Lithium Ion Batteries and Lithium Ion Battery Products was restrained, suppressed,  
26 and eliminated throughout Florida; (2) prices for Lithium Ion Batteries and Lithium Ion Battery  
27 Products were raised, fixed, maintained, and stabilized at artificially high levels throughout Florida;  
28 (3) Florida Plaintiff and the Florida Damages Class were deprived of free and open competition; and

(4) Florida Plaintiff and the Florida Damages Class paid supra-competitive, artificially inflated prices for Lithium Ion Batteries and Lithium Ion Battery Products.

b. During the Class Period, Defendants' illegal conduct substantially affected Florida commerce and consumers.

c. As a direct and proximate result of Defendants' unlawful conduct, Florida Plaintiff and the Florida Damages Class have been injured and are threatened with further injury.

d. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Fla. Stat. §§ 501.201, *et seq.*, and, accordingly, Florida Plaintiff and the Florida Damages Class seek all relief available under that statute.

556. Massachusetts: By reason of the foregoing, Defendants have violated the Massachusetts Consumer and Business Protection Act, M.G.L. c. 93A, § 1, *et seq.* Massachusetts Plaintiff on behalf of the Massachusetts Damages Class alleges as follows:

a. Defendants were engaged in trade or commerce as defined by M.G.L. c. 93A, § 1.

b. Defendants agreed to, and did in fact, act in restraint of trade or commerce in a market which includes Massachusetts, by affecting, fixing, controlling and/or maintaining at artificial and noncompetitive levels, the prices at which Lithium Ion Batteries and Lithium Ion Battery Products were sold, distributed, or obtained in Massachusetts and took efforts to conceal their agreements from the Massachusetts Plaintiffs and members of the Massachusetts Damages Class.

c. Defendants' unlawful conduct had the following effects: (1) price competition for Lithium Ion Batteries and Lithium Ion Battery Products was restrained, suppressed, and eliminated throughout Massachusetts; (2) the prices of Lithium Ion Batteries and Lithium Ion Battery Products were raised, fixed, maintained, and stabilized at artificially high levels throughout Massachusetts; (3) Massachusetts Plaintiffs and members of the Massachusetts Damages Class were deprived of free and open competition; and (4) Massachusetts Plaintiffs and members of the Massachusetts Damages Class paid supra-competitive, artificially inflated prices for Lithium Ion Batteries and Lithium Ion Battery Products.

1 d. As a direct and proximate result of Defendants' unlawful conduct,  
2 Massachusetts Plaintiffs and members of the Massachusetts Damages Class were injured and are  
3 threatened with further injury.

4 e. Each of the Defendants or their representatives have been served with a  
5 demand letter in accordance with M.G.L. c. 93A, § 1, or such service of a demand letter was  
6 unnecessary due to the defendant not maintaining a place of business within the Commonwealth of  
7 Massachusetts or not keeping assets within the Commonwealth. More than thirty days has passed  
8 since such demand letters were served, and each Defendant served has failed to make a reasonable  
9 settlement offer.

10 f. By reason of the foregoing, Defendants engaged in unfair competition and  
11 unfair or deceptive acts or practices, in violation of M.G.L. c. 93A, § 2. Defendants' and their co-  
12 conspirators' violations of Chapter 93A were knowing or willful, entitling the Massachusetts  
13 Plaintiff and the Massachusetts Damages Class to multiple damages.

14 557. Missouri: By reason of the foregoing, Defendants have violated Missouri's  
15 Merchandising Practices Act, specifically Mo. Rev. Stat. § 407.020. Missouri Plaintiff on behalf of  
16 the Missouri Damages Class alleges as follows:

17 a. Missouri Plaintiff and members of the Missouri Damages Class purchased  
18 Lithium Ion Batteries and/or Lithium Ion Battery Products for personal, family, or household  
19 purposes.

20 b. Defendants engaged in the conduct described herein in connection with the  
21 sale of Lithium Ion Batteries and Lithium Ion Battery Products in trade or commerce in a market  
22 that includes Missouri.

23 c. Defendants agreed to, and did in fact affect, fix, control, and/or maintain, at  
24 artificial and non-competitive levels, the prices at which Lithium Ion Batteries and Lithium Ion  
25 Battery Products were sold, distributed, or obtained in Missouri, which conduct constituted unfair  
26 practices in that it was unlawful under federal and state law, violated public policy, was unethical,  
27 oppressive and unscrupulous, and caused substantial injury to Missouri Plaintiff and the members of  
28 the Missouri Damages Class.



1                   d.       Defendants concealed, suppressed, and omitted to disclose material facts to  
2 Missouri Plaintiff and the members of the Missouri Damages Class concerning Defendants'  
3 unlawful activities and artificially inflated prices for Lithium Ion Batteries and Lithium Ion Battery  
4 Products. The concealed, suppressed, and omitted facts would have been important to Missouri  
5 Plaintiff and the members of the Missouri Damages Class as they related to the cost of Lithium Ion  
6 Batteries and Lithium Ion Battery Products that they purchased.

7                   e.       Defendants misrepresented the real cause of price increases and/or the  
8 absence of price reductions in Lithium Ion Batteries and Lithium Ion Battery Products by making  
9 public statements that were not in accord with the facts.

10                  f.       Defendants' statements and conduct concerning the price of Lithium Ion  
11 Batteries and Lithium Ion Battery Products were deceptive as they had the tendency or capacity to  
12 mislead Missouri Plaintiff and the members of the Missouri Damages Class to believe that they  
13 were purchasing Lithium Ion Batteries and Lithium Ion Battery Products at prices established by a  
14 free and fair market. Defendants' unlawful conduct had the following effects: (1) Lithium Ion  
15 Batteries and Lithium Ion Battery Products price competition was restrained, suppressed, and  
16 eliminated throughout Missouri; (2) Lithium Ion Batteries and Lithium Ion Battery Products prices  
17 were raised, fixed, maintained, and stabilized at artificially high levels throughout Missouri; (3)  
18 Missouri Plaintiff and members of the Missouri Damages Class were deprived of free and open  
19 competition; and (4) Missouri Plaintiff and members of the Missouri Damages Class paid supra-  
20 competitive, artificially inflated prices for Lithium Ion Batteries and Lithium Ion Battery Products.

21                  g.       The foregoing acts and practices constituted unlawful practices in violation of  
22 the Missouri Merchandising Practices Act.

23                  h.       As a direct and proximate result of the above-described unlawful practices,  
24 Missouri Plaintiff and members of the Missouri Damages Class suffered ascertainable loss of  
25 money or property.

26                  i.       Accordingly, Missouri Plaintiff and members of the Missouri Damages Class  
27 seek all relief available under Missouri's Merchandising Practices Act, specifically Mo. Rev. Stat. §  
28 407.020, which prohibits "the act, use or employment by any person of any deception, fraud, false

1 pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or  
2 omission of any material fact in connection with the sale or advertisement of any merchandise in  
3 trade or commerce,” as further interpreted by the Missouri Code of State Regulations, 15 CSR 60-  
4 7.010, *et seq.*, 15 CSR 60-8.010, *et seq.*, and 15 CSR 60-9.010, *et seq.*, and Mo. Rev. Stat. §  
5 407.025, which provides for the relief sought in this count.

6 558. Montana: By reason of the foregoing, Defendants have violated Montana’s Unfair  
7 Trade Practices and Consumer Protection Act of 1970, Mont. Code, §§ 30-14-103 *et seq.* Montana  
8 Plaintiff on behalf of the Montana Damages Class alleges as follows:

9 a. Defendants’ unlawful conduct had the following effects: (1) Lithium Ion  
10 Batteries and Lithium Ion Battery Products price competition was restrained, suppressed, and  
11 eliminated throughout Montana; (2) Lithium Ion Batteries and Lithium Ion Battery Products prices  
12 were raised, fixed, maintained, and stabilized at artificially high levels throughout Montana; (3)  
13 Montana Plaintiff and the Montana Damages Class were deprived of free and open competition; and  
14 (4) Montana Plaintiff and the Montana Damages Class paid supra-competitive, artificially inflated  
15 prices for Lithium Ion Batteries and Lithium Ion Battery Products.

16 b. During the Class Period, Defendants’ illegal conduct substantially affected  
17 Montana commerce and consumers.

18 c. As a direct and proximate result of Defendants’ unlawful conduct, Montana  
19 Plaintiff and the Montana Damages Class have been injured and are threatened with further injury.

20 d. Defendants have engaged in unfair competition or unfair or deceptive acts or  
21 practices in violation of Montana’s Unfair Trade Practices and Consumer Protection Act, Mont.  
22 Code, §§ 30-14-103 *et seq.* and, accordingly, Montana Plaintiff and the Montana Damages Class  
23 seek all relief available under that statute.

24 559. Nebraska: By reason of the foregoing, Defendants have violated Nebraska’s  
25 Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601, *et seq.* Nebraska Plaintiff on behalf of the  
26 Nebraska Damages Class alleges as follows:

27 a. Defendants’ unlawful conduct had the following effects: (1) Lithium Ion  
28 Batteries and Lithium Ion Battery Products price competition was restrained, suppressed, and

1 eliminated throughout Nebraska; (2) Lithium Ion Batteries and Lithium Ion Battery Products prices  
2 were raised, fixed, maintained, and stabilized at artificially high levels throughout Nebraska;  
3 (3) Nebraska Plaintiff and the Nebraska Damages Class were deprived of free and open  
4 competition; and (4) Nebraska Plaintiff and the Nebraska Damages Class paid supra-competitive,  
5 artificially inflated prices for Lithium Ion Batteries and Lithium Ion Battery Products.

6 b. During the Class Period, Defendants' illegal conduct substantially affected  
7 Nebraska commerce and consumers.

8 c. As a direct and proximate result of Defendants' unlawful conduct, Nebraska  
9 Plaintiff and the Nebraska Damages Class have been injured and are threatened with further injury.

10 d. Defendants' actions and conspiracy have had a substantial impact on the  
11 public interests of Nebraska and its residents.

12 e. Defendants have engaged in unfair competition or unfair or deceptive acts or  
13 practices in violation of Nebraska's Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601, *et seq.*  
14 and, accordingly, Nebraska Plaintiff and the Nebraska Damages Class seek all relief available under  
15 that statute.

16 560. New Hampshire: By reason of the foregoing, Defendants have violated New  
17 Hampshire's Consumer Protection Act, N.H. Rev. Stat. Ann. §§ 358-A:2, *et seq.* New Hampshire  
18 Plaintiff on behalf of the New Hampshire Damages Class alleges as follows:

19 a. Defendants' unlawful conduct had the following effects: (1) Lithium Ion  
20 Batteries and Lithium Ion Battery Products price competition was restrained, suppressed, and  
21 eliminated throughout New Hampshire; (2) Lithium Ion Batteries and Lithium Ion Battery Products  
22 prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New  
23 Hampshire; (3) New Hampshire Plaintiff and the New Hampshire Damages Class were deprived of  
24 free and open competition; and (4) New Hampshire Plaintiff and the New Hampshire Damages  
25 Class paid supra-competitive, artificially inflated prices for Lithium Ion Batteries and Lithium Ion  
26 Battery Products.

27 b. During the Class Period, Defendants' illegal conduct substantially affected  
28 New Hampshire commerce and consumers.

1 c. As a direct and proximate result of Defendants' unlawful conduct, New  
2 Hampshire Plaintiff and the New Hampshire Damages Class have been injured and are threatened  
3 with further injury.

4 d. Defendants' actions and conspiracy have had a substantial impact on the  
5 public interests of New Hampshire and its residents.

6 e. Defendants have engaged in unfair competition or unfair or deceptive acts or  
7 practices in violation of New Hampshire Consumer Protection Act, N.H. Rev. Stat. Ann. §§ 358-  
8 A:2, *et seq.* and, accordingly, New Hampshire Plaintiff and the New Hampshire Damages Class  
9 seek all relief available under that statute.

10 561. New York: By reason of the foregoing, Defendants have violated New York's  
11 General Business Law, N.Y. Gen. Bus. Law § 349, *et seq.* New York Plaintiff on behalf of the New  
12 York Damages Class alleges as follows:

13 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce by  
14 affecting, fixing, controlling and/or maintaining, at artificial and noncompetitive levels, the prices at  
15 which Lithium Ion Batteries and Lithium Ion Battery Products were sold, distributed or obtained in  
16 New York and took efforts to conceal their agreements from New York Plaintiff and the New York  
17 Damages Class.

18 b. The conduct of the Defendants described herein constitutes consumer-  
19 oriented deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349, which  
20 resulted in consumer injury and broad adverse impact on the public at large, and harmed the public  
21 interest of New York State in an honest marketplace in which economic activity is conducted in a  
22 competitive manner.

23 c. Defendants made certain statements about Lithium Ion Batteries and Lithium  
24 Ion Battery Products that they knew would be seen by New York residents and these statements  
25 either omitted material information that rendered the statements they made materially misleading or  
26 affirmatively misrepresented the real cause of price increases for Lithium Ion Batteries and Lithium  
27 Ion Battery Products.

1 d. Defendants' unlawful conduct had the following effects: (1) Lithium Ion  
2 Batteries and Lithium Ion Battery Products price competition was restrained, suppressed, and  
3 eliminated throughout New York; (2) Lithium Ion Batteries and Lithium Ion Battery Products prices  
4 were raised, fixed, maintained, and stabilized at artificially high levels throughout New York; (3)  
5 New York Plaintiff and the New York Damages Class were deprived of free and open competition;  
6 and (4) New York Plaintiff and the New York Damages Class paid supra-competitive, artificially  
7 inflated prices for Lithium Ion Batteries and Lithium Ion Battery Products.

8 e. During the Class Period, Defendants' illegal conduct substantially affected  
9 New York commerce and consumers.

10 f. During the Class Period, each of the Defendants named herein, directly, or  
11 indirectly and through affiliates they dominated and controlled, manufactured, sold and/or  
12 distributed Lithium Ion Batteries and Lithium Ion Battery Products in New York.

13 g. New York Plaintiff and the New York Damages Class seek actual damages  
14 for their injuries caused by these violations in an amount to be determined at trial and are threatened  
15 with further injury. Without prejudice to their contention that Defendants' unlawful conduct was  
16 willful and knowing, New York Plaintiff and the New York Damages Class do not seek in this  
17 action to have those damages trebled pursuant to N.Y. Gen. Bus. Law § 349(h).

18 562. South Carolina: By reason of the foregoing, Defendants have violated South  
19 Carolina's Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, *et seq.* South Carolina Plaintiff  
20 on behalf of the South Carolina Damages Class alleges as follows:

21 a. Defendants' unlawful conduct had the following effects: (1) Lithium Ion  
22 Batteries and Lithium Ion Battery Products price competition was restrained, suppressed, and  
23 eliminated throughout South Carolina; (2) Lithium Ion Batteries and Lithium Ion Battery Products  
24 prices were raised, fixed, maintained, and stabilized at artificially high levels throughout South  
25 Carolina; (3) South Carolina Plaintiff and the South Carolina Damages Class were deprived of free  
26 and open competition; and (4) South Carolina Plaintiff and the South Carolina Damages Class paid  
27 supra-competitive, artificially inflated prices for Lithium Ion Batteries and Lithium Ion Battery  
28 Products.

1                   b.       During the Class Period, Defendants' illegal conduct substantially affected  
2 South Carolina commerce and consumers.

3                   c.       As a direct and proximate result of Defendants' unlawful conduct, South  
4 Carolina Plaintiff and the South Carolina Damages Class have been injured and are threatened with  
5 further injury.

6                   d.       Defendants have engaged in unfair competition or unfair or deceptive acts or  
7 practices in violation of South Carolina Revised Statutes Annotated §§ 480-1, *et seq.*, and,  
8 accordingly, South Carolina Plaintiff and the South Carolina Damages Class seek all relief available  
9 under that statute.

10           563.   Utah: By reason of the foregoing, Defendants have violated Utah Code §§ 76-10-911,  
11 *et seq.* Utah Plaintiff on behalf of the Utah Indirect Purchaser Class alleges as follows:

12                   a.       Defendants' combinations or conspiracies had the following effects: (1) price  
13 competition for Lithium Ion Batteries was restrained, suppressed, and eliminated throughout Utah;  
14 (2) prices for Lithium Ion Batteries were raised, fixed, maintained and stabilized at artificially high  
15 levels throughout Utah; (3) Utah Plaintiff and the Utah Indirect Purchaser Class were deprived of  
16 free and open competition; and (4) Utah Plaintiff and the Utah Indirect Purchaser Class paid supra-  
17 competitive, artificially inflated prices for Lithium Ion Batteries Products.

18                   b.       During the Class Period, Defendants' illegal conduct had a substantial effect  
19 on Utah commerce.

20                   c.       As a direct and proximate result of Defendants' unlawful conduct, Utah  
21 Plaintiff and the Utah Indirect Purchaser Class have been injured in their business and property and  
22 are threatened with further injury.

23                   d.       By reason of the foregoing, Defendants have entered into agreements in  
24 restraint of trade in violation of violated Utah Code §§ 76-10-911, *et seq.* Accordingly, Utah  
25 Plaintiff and the Utah Indirect Purchaser Class seek all relief available under violated Utah Code §§  
26 76-10-911, *et seq.*

1           564. Vermont: By reason of the foregoing, Defendants have violated Vermont's Consumer  
2 Fraud Act, 9 Vt. Stat. Ann. § 2451, *et seq.* Vermont Plaintiff on behalf of the Vermont Damages  
3 Class alleges as follows:

4           a. Defendants agreed to, and did in fact, act in restraint of trade or commerce in  
5 a market that includes Vermont, by affecting, fixing, controlling, and/or maintaining, at artificial  
6 and noncompetitive levels, the prices at which Lithium Ion Batteries and Lithium Ion Battery  
7 Products were sold, distributed, or obtained in Vermont.

8           b. Defendants deliberately failed to disclose material facts to Vermont Plaintiff  
9 and the Vermont Damages Class concerning Defendants' unlawful activities and artificially inflated  
10 prices for Lithium Ion Batteries and Lithium Ion Battery Products. Defendants owed a duty to  
11 disclose such facts, and considering the relative lack of sophistication of the average, non-business  
12 consumer, Defendants breached that duty by their silence. Defendants misrepresented to all  
13 consumers during the Class Period that Defendants' Lithium Ion Batteries and Lithium Ion Battery  
14 Products prices were competitive and fair.

15           c. Defendants' unlawful conduct had the following effects: (1) Lithium Ion  
16 Batteries and Lithium Ion Battery Products price competition was restrained, suppressed, and  
17 eliminated throughout Vermont; (2) Lithium Ion Batteries and Lithium Ion Battery Products prices  
18 were raised, fixed, maintained, and stabilized at artificially high levels throughout Vermont; (3)  
19 Vermont Plaintiff and the Vermont Damages Class were deprived of free and open competition; and  
20 (4) Vermont Plaintiff and the Vermont Damages Class paid supra-competitive, artificially inflated  
21 prices for Lithium Ion Batteries and Lithium Ion Battery Products.

22           d. As a direct and proximate result of the Defendants' violations of law,  
23 Vermont Plaintiff and the Vermont Damages Class suffered an ascertainable loss of money or  
24 property as a result of Defendants' use or employment of unconscionable and deceptive commercial  
25 practices as set forth above. That loss was caused by Defendants' willful and deceptive conduct, as  
26 described herein.

27           e. Defendants' deception, including their affirmative misrepresentations and  
28 omissions concerning the price of Lithium Ion Batteries and Lithium Ion Battery Products, likely

1 misled all consumers acting reasonably under the circumstances to believe that they were  
2 purchasing Lithium Ion Batteries and Lithium Ion Battery Products at prices born by a free and fair  
3 market. Defendants' misleading conduct and unconscionable activities constitutes unfair  
4 competition or unfair or deceptive acts or practices in violation of 9 Vt. Stat. Ann. § 2451, *et seq.*,  
5 and, accordingly, Vermont Plaintiff and the Vermont Damages Class seek all relief available under  
6 that statute.

### 7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs and Class members pray for relief as set forth below:

9 A. Certification of the action as a class action pursuant to Federal Rule of Civil  
10 Procedure 23, and appointment of Plaintiffs as Class Representatives and their counsel of record as  
11 Class Counsel;

12 B. A declaration that Defendants' conduct constituted an unlawful restraint of trade in  
13 violation of the federal and state statutes alleged herein and that Defendants are liable for the conduct  
14 or damage inflicted by any other co-conspirator.

15 C. Restitution and/or damages to Class members for their purchases of Lithium Ion  
16 Batteries and Lithium Ion Battery Products at inflated prices;

17 D. Actual damages, statutory damages, punitive or treble damages, and such other relief  
18 as provided by the statutes cited herein;

19 E. Pre-judgment and post-judgment interest on such monetary relief;

20 F. Equitable relief in the form of restitution and/or disgorgement of all unlawful or  
21 illegal profits received by Defendants as a result of the anticompetitive conduct alleged herein;

22 G. An injunction against Defendants, their affiliates, successors, transferees, assignees,  
23 and other officers, directors, partners, agents and employees thereof, and all other persons acting or  
24 claiming to act on their behalf or in concert with them from in any manner continuing, maintaining,  
25 or renewing the conduct, contract, conspiracy, or combination alleged herein, or from entering into  
26 any other contract, conspiracy, or combination having a similar purpose or effect, and from adopting  
27 or following any practice, plan, program or device having a similar purpose or effect

28 H. The costs of bringing this suit, including reasonable attorneys' fees; and



1 I. All other relief to which Plaintiffs and Class members may be entitled at law or in  
2 equity.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiffs on behalf of themselves and all others similarly situated hereby request a jury trial  
5 on any and all claims so triable.

6 DATED: March 26, 2014

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1 **ATTESTATION**

2 Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence  
3 in the filing of this document has been obtained from the other signatories above.

4  
5 DATED: March 26, 2014

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